THE LAW RELATING TO INAMS

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K. RAGHAVACHARI

A.R.M. 1627.

THE LAW RELATING TO

INAMS

In the Madras Presidency

DISTRICT AND SESSIONS COURT
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PREFACE.

This book is intended to deal comprehensively with the Inam tenures and the problems of alienation, resumption, enfranchisement and occupancy rights with respect to them. It had its origin in a paper on resumption read by me before the local Bar Association. The case law has as far as possible been dealt with upto date and purely academical matters have been left out as they would not be of much use to the practising lawyer. I would consider my object achieved if the book is found useful to the profession. I thank my friends for their valuable suggestions during the progress of this work. No one is more aware of the defects of this work than myself and I would be extremely obliged for any corrections from the readers which would be duly incorporated in the next edition.

Cocanada,
15-10 30.

K. RAGHAVACHARI.

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CHAPTER I.

ORIGIN AND NATURE OF INAM GRANTS.

The word Inam is of Arabic origin signifying reward or favour. Wilson defines it in his Glossary as a gift, a benefaction in general–a gift by a superior to an inferior. It might consist of land or merely of land revenue. But Baden Powell says that an Inam grant per se was a grant of land held rent free and that it was an accident of subsequent occurence that an Inam was often charged with part-payment of revenue or favourable assessment.

Such grants were not unknown to the Hindus prior to the Mahomedan period. From times immemorial, the Hindu Sovereigns bestowed gifts on their officers, dependants and brahmins learned in the Vedas and such gifts very often took the shape of grants of land. The village services also were compensated with Inams attached thereto. The grants were then called Manyams and were very often reduced to writing either on plates of copper or on slabs of stone. The grants described the genealogy and name of the grantor, the name of the grantee, the purpose and subject matter of the grant, the time of the grant, and invariably ended with imprecations on those who violated the grants.

The practice of bestowing beneficial grants was continued by the Mahomedans; they were mostly con-

ferred upon near relatives and officers civil or military and were known as Jagirs. The British Government continued the system of granting Jagirs till the Board of Directors in 1822 expressed their opinion that money pensions should take the place of grants of land.

One important question that arises for consideration is whether such grants were grants of land or of land revenue alone. The grantor could only grant the rights he had in the property whether they consisted of the Soil itself or only the land revenue thereon. The subject is of great importance as the rights of Resumption and Enfranchisement are based upon it. The law relating to occupancy rights also was developed with reference to the question whether the grants consisted of the soil itself or merely of the land revenue.

Rights in the Soil

Scholars have been at variance as to the communal or individualistic origin of property but are agreed that at some period of human evolution, the rights of ownership and possession of property vested in the individual rather than in the community. But while in the west the idea of the Sovereign's rights in the soil superseded the individual proprietary right, the latter theory was the generally accepted one in India during the Hindu period. The King or sovereign though called the Lord of the realm (Bhupati or Prithvipati) seems to have been only so called owing to his rights over his subjects, in dischargeof his paramount duty of protecting the good and punishing the wicked.

Manu the earliest law giver of any authority in India discusses the private ownership of land and the king's rights in the soil. 'Sages declare a field to belong to him who cleared away the timber and a deer to him who first wounded it' (Ch. IX-44). Again in Ch. VII 130 he says 'A fiftieth part of the increment of cattle and gold may be taken by the king and the eighth, sixth or twelfth part of the crops'[1]. A similar sentiment has been echoed in one form or other by other lawgivers Gautama, Yajnavalkya etc. The king's right to receive a share in the crops seems to have been the remuneration fixed for the protection of his subjects rather than in lieu of his rights in the soil. Yajnavalkya and Bodhayana are clear on this point. Jaimini discusses the king's right to gift away his whole realm at the Viswajit Sacrifice and concludes that the king had no rights to the proprietorship of the soil except where such rights were obtained by conquest. Even the Mahommedan conception seems to be in accordance with the Hindu notions of the sovereign's right to the revenue from the land. But the idea of the sovereign's rights in the soil was fast gaining ground and in the British period, the feudal notion of sovereignty influenced the legislators to a great extent. A history of the proprietary interest in land is lucidly dealt with in Baden Powell's Land systems of British India Vol. I Ch. IV Sec. VI P. 217 to 240.

Early in 1796, the Government of Madras declared that 'the sovereign whether he be a Hindu or Muhammedan

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1. Maxmuller's Translation in Sacred Books of the East.

is lord of the soil.' Regulations II & XIX of 1793 seem to have recognised the right of the ruling power only to a portion of the produce. But Regn. XXX of 1802 in its preamble declared the reservation to the ruling power of 'the implied right and actual exercise of the proprietary possession of all lands whatever'. Regn. XXXI of 1802 says that the ruling power 'has reserved to itself and has exercised the actual proprietary right of lands of every description'. The words so used in the regulations are indicative of the sovereign's rights in the soil but the Privy Council in the case of Collector of Trichinopoly V. Lakhamani[1] clearly declares that the regulations were not intended to effect the private property in land. Regn. IV of 1822 was passed to declare that the Regulations XXV & XXXI of 1802 were not intended to interfere with the actual rights of the ryots. Later declarations of the Government that it had no proprietary interest in the soil are not wanting.[2] Even so late as 1902 in a Book entitled the Land Revenue policy of the Government (Resolution of the Government of India dated 16 Jan. 1902) the following observation occurs. 'It has already been stated on the authority of Regn. XIX of 1793 that the ruling power in India has always by the ancient law of the country been entitled to a share in the produce of the soil' which clearly negatives the right of the ruling power to proprietary interest in the lands.

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1. 1. I. A. 282=25 W. R. 358
2. G. O. No. 1008 dated 21-9-1882.

The minute of Honourable W. Elliott dated 16th June 1859 is an instructive document. While agreeing with Sir Charles Trevelyan as regards the rules framed by him for the guidance of the Inam Commissioner, he discussed the origin of Inams and observed that the Sovereign was entitled only to the land revenue. He says 'The very idea of a Sovereign being the sole proprietor of all the land in his dominions is opposed to reason and experience. The assertion of such a right in Europe by the introduction of the feudal system was a gigantic military usurpation. The Mussulman conquerors without the same bold assertion arrived practically at a similar result by the enhancement of assessment so oppressive as in effect to destroy the proprietor's rights ....A Sovereign when desiring to appropriate a piece of land permanently for the site of a temple or other building purchased it for so much money from the inhabitants................What the ruling power did bestow by the issue of a Sanad of Inam was the alienation of a portion of the landtax to some specified object.'

Early judicial decisions also have recognised the same principle. In Secretary of State V. Veerarayan[1] Muthuswami Iyer J. observes 'According to what may be termed the Hindu common law, a right to possession of the land is acquired by the first person who makes a beneficial use of the soil. The crown is entitled to assess the occupier with revenue'. The right of a resident cultivator according to the common law of the land to

1. 9 Mad 175 at p 179

an allotment of land in the village though not to the same lands was recognised in the Full Bench case Krishnaswami V. Varadaraja.[1] While considering the rights of Zemindars in Estates the Madras High Court in Venkata Narasimha Naidu V. Kotayya[2], and Cheekati Zemindar V. Rana Surudora[3], observed that the tenant did not claim his rights through the Zemindar, that the latter had only the right to a share in the produce that the payments by tenants could not be strictly called *rent* and that the system of agricultural land holding in the country was in accordance with such a view.

But the Privy Council in Suryanarayana V. Potanna[4] referring to the preamble in Regulation XXXI of 1802, declares that 'the mere fact that Rulers in India generally collected their land revenue by taking a share of the produce of the land is not by itself evidence that the soil of land in India was not owned by them and could not be granted by them. The fact would support the contrary assumption that *the soil was vested in the Rulers who drew their land revenue from the soil generally in the shape of a share in the produce of the soil ....'* This observation has not been displaced by the latter rulings of the Privy Council but it is submitted that the view so stated is entirely erroneous. Their Lordships of the Privy Council do not refer to the Regulations of 1793 & 1822, the early Privy Council case of Collector of Trichinopoly

1. 5 Mad 345 F. B.
2. 20 Mad 299
3. 23 Mad 318
4. 41 Mad 1012

V. Lakhamani[1], and the later observations of the Government above referred to. The prominent feudal idea of the Sovereign's right to the land influenced their mind and this august pronouncement of the highest tribunal had a far reaching effect on the law relating to occupancy rights. The theory of Enfranchisement as implying a resumption and regrant is only consistent with the Sovereign's rights in the Soil and cannot be explained by any other hypothesis.

The Sovereign's right to waste lands was also a disputed question. It was asserted on the one side that the king was the owner of the waste lands in his country while on the other, the proprietary interest in such lands was assigned to the village communities. With the change of outlook in the British administration with reference to cultivated lands, the waste lands were assumed to be the property of the state except where the villagers laid a claim to such property as being intended for communal purposes. In Bhaskarappa V. Collector of North Canara[2], West J observed that 'under the British Rule, though its introduction would not extinguish private rights already fully acquired, the principle from which we must start is that waste lands belong to the state' The same observations were cited with approval in Secretary of State for India V. Krishnayya[3] and Seshachelam Chetti V. Chinnaswami[4].

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1. 1 I. A. 282
2. 3 Bom 452
3. 28 Mad 257
4. 40 Mad 410

The prevalent idea with reference to cultivated and waste lands is thus in favour of the Sovereign's rights to the soil and not merely to the land revenue thereon.

Kinds of Inam Grants.

The Inam Commission in 1858 dealt with the Inam grants and enumerated nine kinds of grants according to their object and purpose.

(1) For religious institutions like Temples, Pagodas and Mosques and services connected therewith.

(2) For purposes of public utility such are the grants for the support of chatrams, waterpandals, topes, groves, flowergardens etc.

(3) Dasabhandam Inams for construction, maintenance and repair of Irrigation works in the Ceded Districts, Kristna, Nellore, North Arcot, and Salem.

(4) Maintenance grants for the families of the Poligars, and ancient land officers like Kanungas and Deshmukhs.

(5) Grants to Brahmins or other religious persons for their maintenance called Bhatavritti, Agraharam, Shrotriem, Khairati etc.

(6) Lands alienated for the support of the members of the family by Poligars like Bissoye, Dorathnam, Mokhasa, Jivitham, Amaram, Umlikai etc.

(7) Grants to general police of the country under former rulers like kattubadis.

(8) Grants to Village Headmen, Karnams etc.

(9) Grants to village artisans.[1]

Inam grants might be entirely revenue free or pay a favourable assessment. In the former case they are called Sarvamaniams or Sarva Dumbala Inams while in the latter they are said to be held on jodi or quitrent tenure.

Again an Inam grant might consist of a portion of a village or a village or group of villages. In the first case the Inam is called a Minor Inam and in the two latter cases, Major Inams.

The Inam Commission subdivided the Inam grants further with reference to Enfranchisement into

(a) Unenfranchised Inams.

(b) Enfranchised but liable to pay a jodi or quitrent.

(c) Enfranchised, the rent being commuted or redeemed.

As Baden Powell says ' Where the Inam grant is enfranchised, there is a perfect title to the whole freed from all conditions except the payment of quitrent. All irregularities in the title, liabilities to resumption, and demands for service are cured and removed. But where the conditions offered are not accepted, the Inam

1. Baden Powell's Land Systems in British India Vol. III P. 79-81

remained at any rate in theory liable to original restrictions and conditions of the tenure. There was no power of alienation, and there was the liability to resumption in some cases after the expiry of a given number of lives or on failure of heirs male in the direct line. Government could moreover resume for failure to perform the service of which failure the Government was the sole judge.'

One important classification of Inam grants is into Personal and Service grants. The personal grants are mostly hereditary and might be either revenue free or reserve a favourable jodi or quitrent. The resumption of such Inams depends upon the conditions of the grant. The absence of lineal heirs, and the alienations to strangers etc might entail forfeiture by the grantor. The Service grants are grants in consideration of services whether past or future. These grants became gradually hereditary though they were at first restricted to the life of the grantee.

The personal grants consisted mainly of grants to Brahmins and other religious persons. Grants to Brahmins were called Brahmadayam grants in contradistinction to Devadayam grants and included Agraharams and Shrotriems.

An *agraharam* grant is one of a village or part thereof made to a community of Brahmins who might be of different sects held either rent free or at a reduced rate of assessment. It might be a Sarva-Agraharam entirely

rent free, a Bilmakta Agraharam, one held at a stipulated rent or a Kattubadi Agraharam one held at a favourable rent. (Refer Wilson's Glossary).

The nature of a *Shrotriem* is similar to that of an agraharam but it was usually given to particular Brahmin families while the latter was given to Brahmins of different sects. It had its origin in grants to persons who recited the Vedas or the Sruti. Wilson defines it thus in his Glossary: 'It is a grant of lands or a village held at a favourable rate properly an assignment of land or revenue to a Brahmin learned in the Vedas but latterly applied to similar assignments to native servants of the Government, civil or military and both Hindus and Muhammedans as a reward for past services'. Baden-Powell observes that the land was not necessarily held by a Shrotriem grantee. Such grants were generally of land revenue and whether the land was unoccupied or acquired with the grant is a question of fact in each case. Their Lordships of the Privy Council in Seethayya V. SubramaniaSomayajulu[1] accept the view that a Shrotriem grant might in fact consist of the Melvaram as well as the Kudivaram rights and on the facts of the case held that the Melvaram or land revenue alone was granted.

An enumeration and description of the minor personal grants is purely of an academical nature and are dealt with in Chap. VII of Sundararaja Iyengar's work on Land-tenures in the Madras Presidency.

1. 56 M. L. J. 730—1929 A. I. R. 115 P. C.

CHAPTER II.

SERVICE GRANTS.

The village was an important self-governing factor in Ancient India and its administration was carried on by committees established to supervise the various departments such as Sanitation, Revenue, and Irrigation works. The King took a leading part in the formation of new Village communities and we hear of an instance in the 13th century A. D., where the King took the initiative in the formation of a village by providing lands for all communal purposes such as grazing of cattle, maintenance of the new settlers, and *the remuneration of the village officers and artisans*[1]. Even as early as the 3rd century B. C., we hear of Kautilya in his Artha-Sastra enjoining upon the King the duty of clearing forest lands and forming new villages with necessary establishments therein[2].

In the Ancient Hindu States, Revenue was for a long time payable in kind only and the officers of the Central establishment were remunerated by varying quantities of grain. In villages, one of the earliest

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1. Dr. Mathai in his Village Government in British India referring to the Report of Madras Epigraphy 1913-14 P. 92.

2. Vide Book II Chapters I & II.

modes of remuneration was by giving the village servants a definite share out of the common heap of grain on the threshing floor[1]. This system of remuneration in kind subsequently gave way to the grant of lands and the village servants were required to serve every member of the community on demand. The land that was granted to the village artisans, in lieu of their services was regarded as communal and exempted from public taxation[2]. "Superintendents, Accountants, Gopis, Sthanikas, Veterinary Surgeons, Physicians, Horsetrainers and messengers shall also be endowed with lands which they have no right to alienate or mortgage[3]". Lands so granted were not alienable. Such restraint which may be coeval with the practice of allotting lands for village services was desirable from considerations of public policy. As coinage was also prevalent in the days of Kautilya, the writer in a latter chapter of his work (Book iv. Ch. iii) entitled the Subsistence to Government servants, mentioned payment in Panams and added, "when wanting in money, the King may give forest produce, cattle or fields along with a small amount of money."

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1. Village Government in British India at P. 16.
2. Local Government in Ancient India by Radhakumud Mukherji at P. 256.
3. Refer R. Shamasastry's Translation of Kautilya's Arthasastra. Book II.

Sir Henry Maine thus speaks of the Village services and their remuneration in his book Village on communities in the East and West, 'I have several times spoken of the villages as organised and selfacting. They in fact include a nearly complete establishment of occupations and trades for enabling them to continue their collective life without assistance from any person or body external to them. The person practising any one of these hereditary employments is really a servant of the community as well as one of its component members. He is sometimes paid by an allowance in grain ; more generally by the allotment to his family of a piece of cultivated land in hereditary possession' (Lec. IV).

Classification of Service Grants.

The list of Inams prepared by the Inam Commission in 1858 contains both personal and Service grants. The Service grants noted therein as classified according to their object are (1) Inams granted in favour of religious institutions and for services connected therewith (2) Dasabandham Inams for the maintenance, construction and repair of irrigation works (3) Inams for public utility viz. for maintaining chatrams water pandals etc ,(4)Lands alienated to poligars viz.–Mokhasa, Amaram etc., (5) Grants connected with General Police like the Kattubadis (6) Grants to Village Headmen, Karnams and artisans.

It is more useful however to classify them according to he nature of the services for which they were granted

into (a) Private or personal (b) Public (c) Charitable and Religious grants. The law relating to resumption of Service grants has been developed with reference to such a division. This division may be said to be broad on account of the difficulty of marking the dividing line between the first two classes and their consequential merger into each other.

Private or personal service grants:—Though the distinction between personal and public service grants has not been clearly brought out in any of the judicial decisions, private or personal service grants have been referred to as those reserving services personal to the grantor (Vide Raja of Vizianagaram V. Gangadu[1]). A definition of personal or private services cannot be attempted except by an enumeration of the various Judicial decisions in which the following grants were associated with Services personal to the grantor.

(*a* Gadaba, Dandi or Palanquin bearer Service Refer Sanyasiraju V. Zemindar of Salur[2]. Raja Visveswara V. Buderodo [3]. and Suryanarayanaraju V. Secretary of State[4].

(*b*) Bhatraju or minstrel grant-Venkatarangayya V Appalaraju [5].

(*c*) Grant for attendance on the Zemindar while at devotions-Chowdanna V. Venkatapathi [5].

1. 1927 A. I. R. 1001 Mad.
2. 7 Mad. 268.
3. 1910 M. W. N. 436.
4. 1 L. W. 662.
5. 20 M. L. J. 728
6. 50 M. L. J. 429.

(*d*) Grants for attending treasury and collecting rents etc., Gajapati Maharaja V Sonti Prahlad [1].

(*e*) Barki Service, sweeping floors etc.—Yellava V Bhimappa [2].

(*f*) Gorait or Watchman Service—Radha Prasad V Buddhu [3]. The facts of the case go to show that the Services were personal to the Zemindar. But the Village Watchman Service is a public Service and is governed in the Madras Presidency by the Hereditary Village Offices Act. III of 1895.

There are many other grants like the Godugu, Darji, Nakara, Tabela etc., which are also purely personal in their nature. A list of such grants can be seen in the book Land Tenures in the Madras Presidency by S. Sundara Raja Iyengar at pages 238 & 239.

Certain grants which are associated with Military Services and as such quasi-public in their nature have been treated as personal Service grants since the Permanent Settlement. No deduction was made in general on their account in fixing the peshcush payable by the Zemindars.

(a) The Bissoyee tenure in the Maliahs of Ganjam enforced upon the grantee the duties of controlling the Savaras, maintaining peace and good order and defending

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1. 1914 M.W.N. 179. 2. 39 Bom. 68. 3. 22 Cal. 938.

passes to plains. Refer Goura Chandra Gajapati Deo V Secretary of State[1].

(b) Amaram and Kattubadi grants—The Amaram grant was referred to by Maclean as a grant for the Command of a thousand horse and by Wilson for military or Police Service. As has been pointed out in Narasayya V. Venkatagiri[2] the duties consisted in collecting revenue, guarding the treasury, keeping tannahs and forming watchparties on ghats In Rajah of Venkatagiri V. Narasayya[3] the precise nature of the Amaram tenure was held to be not clear. The Kattubadis were grants to subordinate police and Stratton in his report of 1800 reported that there was not in reality any clearly defined difference between the two tenures. The Madras High Court has held that both the grants are resumable at the will and pleasure of the grantor. (Rajah Bommaraju Bahadur V. Pemmaswami[4], Narasayya V. Venkatagiri[2], Venkatagiri V. Narasayya[3].

(c) Next in importance comes the Mokhasa Tenure well known in the Northern Circars. The Word Mokhasa as defined by Wilson in his glossary implies a grant on condition of service. The grant in Sri Sobhanadri V. Narasimha[5] was a Mokhasa grant and the duties consisted in providing the services of one Naik and fourteen peons, in guarding the Zemindar's fort and treasury and

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1. 28 Mad. 130.
2. 23 Mad 262.
3. 37 Mad. 1.
4. 7 M. I. A. 128.
5. 26 Mad. 403.

in attending upon the Zemindar in hunting excursoins. Where the grant was to relatives, services were neither rendered nor demanded (Refer Vizianagaram Maharajah V. Sitaramaraju[1]). The nature of a Mokhasa has been thus described by Taylor in G. O. No. 1335 dated 11-8-1860. 'The Mokhasas were grants made by the Zemindars to their relations, dependents or castemen and peons. The relations held the villages for subsistence and the others were military chiefs and armed retainers of the Zemindars. The services required from the castemen was light; They simply attended the Zemindars on state occasions or accompanied them with their followers to the field but they were not subject to inferior kind of service such as guarding the fort, treasury etc. which devolved on the peons. The service of the clansmen was in fact occasional and honorary whilst that of the peons was more constantly in requisition. But since the Permanent Settlement, service has not been demanded from either of these classes except in a few instances. Because the Zemindars have no longer an occasion for it and it involves moreover a payment of a heavy batta.......' The income from the Mokhasas was not excluded in fixing the Peshkush payable by the Zemindar and the Mokhasas were treated as service grants for the purpose of resumability.

(d) The Jaghir denotes primafacie a grant for life and was granted for maintenance of troops or in lieu of

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1. 19 Mad. 100.

some other service rendered to the State. The grant usually consisted of land revenue only and became heritable and permanent. Saranjams in Bombay are similar to the Jagirs and had their origin in police and other duties - Both Saranjams and Jagirs have been considered as personal grants and resumable at the will of the grantor (Refer Raghojirao V. Lakshmanarao[1] Sam V. Ramalinga Mudaliar[2], Secretary of State V Lakshmibai[3]).

Services in the rendering of which the community is interested and in which the sovereign or the grantor has no personal interest such as the discharge of police or magisterial duties, the maintenance, construction and repair of irrigation works, and services connected with the Village establishments are considered to be public in their nature. In Secretary of state V Sri Rajah Vasireddi[2] a decision dealing with a Karnam Service Inam, it was held that the Services are of a public nature where the Zemindar is not benefitted but only the state or the community.

Grants to Village Officers and artizans mentioned in Baden Powell's Classification No. 6 are public services. Sec. 3 of the Hereditary Village Offices Act mentions the following village officers, the Karnam, Munsiff, Carpenter Blacksmith, Barber, Washerman, Potter, Astrologer and purohit or priest. The incidents attached to Village Services, the succession pertaining thereto, the recovery

1. 36 Bom. 639 P. C.
2. 40 Mad. 664.
3. 44 M. L. J. 471 P. C.
4. 30 L. W. 129.

of the officers and emoluments attached to them, the removal, punishment and appointment of Village Officers are governed by the Hereditary Villages Offices Act. III of 1895, the Proprietary Village Offices Act. II of 1894 and Board's Standing orders Nos. 145 to 154.

The Dasabandham grants in Ceded districts, Kristna Nellore and South Arcot were usually granted for the maintenance, Construction and repair of tanks, locks, channels and other irrigation works. Their origin dates back to the Hindu period. The term Kattukodigi grant in Canarese is synonymous with Dasabandham and is referred to in some of the earlier inscriptions[1]. Such grants were sometimes of land and sometimes of land revenue alone. The grant of land was called Khandam Dasabandham and of land revenue Shamilaat Dasabandham.

The third division of grants which have been mentioned above are the charitable or religious grants. The following are some of the religious grants.

(a) Grant for reciting vedas in a temple Chiranjivi V Manikyarao[2].

(b) Grant to keep a mosque in good order and put up lights in it. Sikandar V Secretary of State[3].

(c) Grant to a village servant for telling Suddulu at the festival of a gramadevata. Subbayya V Ramayya[4].

1. Radhakumud Mukherji's Local Government in Ancient India P. 155.
2. 27 M. L. J. 179. 3. 5 L. W. 402. 4. 22 L. W. 225.

(d) Swastivachakam Service—Neti Anjaneyulu V Venugopal[1].

(5) Musician's service in a temple.—Kadiyala Basavayya V. Muniswami[2].

The religious and charitable grants though they be for public purposes are not religious and charitable trusts (Refer Rangachari V Pranatartihara[3] and Venkata Subbayya V Shaik Silar Sahib[4])

A grant to a person in his capacity as an official of a religious institution is a grant to the institution. Where a substantial part of the income of the grant goes to a temple or a mosque the grant is also to the institution alone. But a grant to a named person would be a grant to him alone as a persona designata (Refer 53 M. L. J. Short notes P. 15).

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1. 45 Mad. 620.
2. 86 I. C. 1041.
3. 18 M. L. T. 122.
4. 3 L. W. 157

CHAPTER III.

ALIENATION OF INAMS.

The restraint on alienation of service Inams has already been referred to as having been existent even in the days of Kautilya but the personal Inams were not only hereditary but also alienable. The grants as evidenced by copper plates and inscriptions show that absolute rights were given and the grantees were to enjoy the same so long as the sun, moon and stars existed. The restrictions on alienation of personal grants and the duration of such grants for one or more lives was of a later origin In fact the feudal notions of tail male and tail female may be said to have been unknown to early Hindu Law. The Inam rules laid a restriction on Succession, adoption and alienation of Inams and the result of enfranchisement proceedings was to convert the holdings into ordinary heritable and alienable property. But unenfranchised Inams, whether personal, service or Religious are still subject to various restrictions.

The earliest regulation with respect to personal grants was Regulation IV of 1831 which declared that such grants consisting of money or land revenue were not liable to attachment or sequestration in satisfaction of any decree or order of court save in case of personal debts or obligations. Act. XXXI of 1836 extended the

regulation to grants by the Native rulers and confirmed and continued by the British Government. Act XXIII of 1838 restricted the terms of the earlier regulation and repealed the clause permitting attachment of the grants in particular cases. The Regulations and Acts have now been superseded by the Pensions Act XXIII of 1871. Sections 11 & 12 of the Act prohibit attachment or sequestration by courts and alienations by the Inamdars. But the Act was consistently held to have been applicable to grants of land revenue or money and not to grants of land revenue free. (Vide Panchananda V Nilakanta[1] Kumara Tirumala Naik V Bangaru [2] Balwant V Secretary of State [3], Vaidyanatha Iyer V Yogambal[4] and other cases). But Ramesam J further observes in the last mentioned case that the Act applies equally to a case where land revenue was distinctly granted accompanied by a grant of the land itself.

As regards personal grants of land not enfranchised by the Inam commissioner but merely confirmed under Rule 5 of the Inam Rules dated 11th oct. 1859, sub clause (3) of the Rule restricts their alienation but has been recently interpreted in Vaidyanatha Iyer V Yogambal [4] to declare that the alienations are only inoperative as against the Government. The object of Rule 3 was only to protect the interest of the Government and so long as the Government does not step in to enforce their

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1. 7 Mad. 191.
2. 21 Mad. 310.
3. 29 Bom. 480.
4. 51 M. L. J. 695.

rights by ignoring the alienation it is not open to third parties to question the same.

Apart from the rights of the Government to intervene if it so desires, the right of alienation of personal Inams has been upheld in a number of decisions of the Madras High Court (Refer. Lakshmipathi V Narasimham [1] Boyinapalli Venugopalarao V Narasimharao [2] Venkatrama V Chendrasekhara [3] Vaidyanatham V Yogambal [4]). A suit for partition of the unenfranchised personal Inams was held to be maintainable in a civil court in Vaidyanatham V Yogambal [4].

The restraint on alienation was only intended to protect the reversionary interests of the Government and Standing Order 57 provides that unenfranchised personal inams ie. unenfranchised inams held for subsistence confirmed for a life or lives or on hereditary tenure are not transferable by alienation and if so alienated, the Collector may fully assess the Inams. The term alienation was explained so as to include a mortgage but the mortgaged inams should not be resumed and assessed fully as a rule without giving the mortgagor an opportunity of redeeming the mortgage.

Service Inams as has been observed in the last chapter might be private or personal, public, or religious and charitable.

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1. 3 L. W. 590.
2. 1911 (2) M. W. N. 384.
3. 44 Mad. 632—40 M. L. J. 344.
4. 51 M.L.J. 695.

Personal Service Inams were held to be alienable by mortgage or sale in Yerranna V. Kannamma [1] and Sitarama Sastrulu V. Ramudu[2]. The Hereditary Village Offices Act and the earlier regulation VI of 1831 were held not applicable to such Inams.

Public Service Inams stand on a different footing. Sec. 2 of the Regulation VI of 1831 prohibited the alienation of inams granted by the state to hereditary village and other offices in the Revenue and Police departments. The Madras Hereditary Village Offices Act while repealing the above said Regulation reenacted in Sec. 5 the prohibition against alienation. Board's Standing Order 55 Cl. (2) provides that such Inams may be resumed on alienation and the assessment may be ordered to be credited to general revenues or assigned to the working incumbent if the services are continued.

The prohibition against alienation was based on public policy. In the words of Schwabe C. J. in Neti Anjaneyulu V. Sri Venugopal [3], 'it is obvious that the office holder would in all probability no longer perform the Services and further, it is quite opposed to the nature of his interest and his duty, namely that he should enjoy the produce of the land as salary for public services he has to render, that he should sell it or alienate it leaving himself without the means of subsistence and without

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1. 21 M. L. J. 962 (Gadaba Service.) 2. 1911 (2) M.W. N. 588
3. 45 Mad. 620—1922 M. W. N. 307.

further interest in the place or in the performance of the services.' Again, the prohibition is intended to safeguard the interest of the successors. The alienation of religious offices has been based on the further ground that the transferee if he happens to be a Christian or an Arya Samajist opposed to idol worship, cannot be obliged to make arrangements for the service in a Hindu temple as a condition for the enjoyment of the land.

Sales, Mortgages and gifts of public service Inams including religious and charitable grants are invalid. Peda Subbayya V. Ramayya [1], Kadiyala Basavayya V. Muniswami Naidu [2], Midnapore Zamindari V. Appayyasami [3], Sarkum Abdul Wahib V. Rahiman [4], Kuppa V. Doraswami [5] etc.

A contract of sale entered into prior to enfranchisement is equally invalid though the conveyance was agreed to be executed subsequent to it—(Refer 48 M. L. J. Short Notes P. 20). A partition of Service Inams was however allowed in 14 Law Weekly Short Notes P. 17 for convienience of enjoyment as it would not amount to an alienation as contemplated by the Hereditary Village Offices Act.

The prohibition extends to the case of involuntary alienations as well. Involuntary alienations might be by attachment or sale of the subject matter of the grant in

1. 51 M. L. J. 131.
2. 86 I. C. 1041.
3. 41 Mad. 749.
4. 24 Cal. 83.
5. 6 Mad. 76.

pursuance of a decree or order of a Court. An attachment of growing crops has been prohibited by the operation of Sec. 5 of the Hereditary Village Offices Act. (Vide Kannan Naidu V. Latchanna [1]). The attachment and sale of religious Inams as well as of the Inams for public service was prohibited in Rajah Nilamani Singh V. Kashee Mahtoon [2], Kandala Venkatarangachari V. Krishnamachari [3], Neti Anjaneyulu V. Sri Venugopal [4] The alienation would be equally invalid even if it was in favour of the member of the family. (Refer. Vengala Venkatrao V. Papayya [5], Vusa Chandrakantam V. Subbarayudu [6]). The contrary view was however held in an early Bombay case Mancharam V. Pranshankar [7]. It was held in the Madras Cases dissenting from the Bombay Case that the alienation even if it were to be in favour of a member of the family might induce needy incumbents to sell the offices to persons who did not possess the necessary qualifications for tne office.

A custom authorising alienation of Service Inams was held to be invalid in Sundararaja V Seshadri[8] as illegal alienations if repeated could not be said to convert nonalienable into alienable property, but where the alienor does not get any pecuniary benefit for himself, a custom authorising alienation seems to have been

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1. 23 Mad. 492.
2. 25 W. R. 206.
3. 1911 (2) M.W. N. 473.
4. 45 Mad. 620
5. 24 L W. 674—98 I. C. 848.
6. 1 L. W. 827.
7. 6 Bom. 298.
8. 54 M. L. J. 76 (Archaka Service.)

upheld in Sundarambal V. Yogavana Gurukkal[1] on the authority of the Privy Council in Raja Muthu Ramalinga V. Periya Nayakam[2].

Subsequent Enfranchisement would not validate the transactions initially void (Refer Ramayya V Jagannatham[3] and Vaddadi Sannamma V Radhabai[4]). In the later case a mortgage was held to be invalid when effected after the issue of an Inam title deed but before the notification contemplated by Sec. 17 of the Proprietary Village Services Act. Sec. 43 of the Transfer of Property Act was held not to apply to a case where the transfer was prohibited by law on grounds of public policy. The principle of Estoppel was held not to prevent an office holder from recovering the emoluments even though his predecessor in title did not raise the objection at the time of attachment and sale. (46 M. L. J. Short Notes 37).

Though the principle applicable to the Religious and and Charitable Inams is the same as in the case of other public services, the policy of the Government is to view the alienations of the former class with less rigour than in the case of the latter. The Government would not interfere with the Inams so long as the services were performed or institutions maintained. (B. S. O. No. 54). On the same principle, temporary alienations were held to be not violations of a Dharmadayam grant as to entail resumption in Secretary of State V. Gulam

1. 38 M. 850.
2. 1 I. A. 209.
3. 39 M. 930.
4. 41 M. 418—1918 M.W. N. 23 F. B.

Mahaboobkhan[1] and resumption consequent on such alienations was held illegal.

An important question which arises with reference to such alienations is whether they are not valid atleast during the lifetime of the alienor office holder even though they might be inoperative as against the Government or the successor in office. The decisions are conflicting and irreconcilable. In the early Bombay Case Lotlikar V. Wagle[2], the sale of a temple service Inam was upheld as 'there was no objection on the part of the temple authorities to the sale if the judgmentdebtor continued to perform the service.' In Vusa Chandrakantam V. Subbarayudu [3], it was held that the Inamdar could alienate for his lifetime. The case in Midnapore Zemindari V. Appayasami [4] was one relating to a palayam on military tenure and the alienation was upheld for the lifetime of the alienor and while he performed the services. In Neti Anjaneyulu V. Sri Venugopal [5] which dealt with an Inam for Swastivachakam service, an out and out sale for the period of time during which the alienor lives and renders services was held contrary to public policy.

This decision was approved in Kadiyam Basavayya V Muniswami Naidu [6] where the Inam consisted of a musician's service attached to a temple. But in Venkanna V China Appalaswami, [7] the alicnation of a carpenter

1. 1919 M. W. N. 736.
2. 6 Bom. 596.
3. 1 L. W. 827—1914 M. W. N. 745.
4. 41 Mad. 749.
5. 45 Mad. 620.
6. 86 I. C. 1041.
7. 48 M. L. J. 217.

Blacksmith Inam was held valid during the lifetime of the alienor officeholder and Devadoss J. observes that such an alienation though inoperative against the Government or the successor in office was not void abinitio. None of the rulings above referred to were quoted and discussed though the general principles applying to the case of Village and Religious Services are the same. The better opinion seems to point to the desirability of upholding the alienations during the life time of the alienor so long as he performs the services. If so validated, the rights of innocent mortgagees and Vendees would be safeguarded and the office holder would be able to enjoy the property with all its incidents so long as he properly discharges his duties. Nonperformance of services would be punished with his dismissal. Even when the alienations are upheld during the life of the officeholder, the alienor could still relinquish his office in favour of his successor and thus defeat the rights of the alienees.

Sec. 5 of the Hereditary Village Offices Act does not however prevent leases of service Inams but only prohibits them from being transferred or encumbered. The word 'transfer' in the Section was interpreted to mean transfer of ownership in Kshetrabaro Bissoye V. Harikristna Naidu[1] and even a permanent lease of a village service Inam is valid. The decision was approved in the later cases Kumara Peda Subbayya V. Chinnappa[2] and Viraswami Mudali V. Palaniappan[3]. The

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1. 33 Mad. 340. 2. 28 M. L. J. 303. 3. 46 M. L. J. 515.

Privy council case of Venkateswara V. Alagamuthoo [1] which dealt with the perpetual lease of a Zemindari was noted with approval in those cases. In the Privy Council case, the words ' Gift, sale or transfer' in the regulation XXV of 1802 were held to exclude leases from their operation. A permanent lease of service Inam lands was held in Viraswami V. Palaniappan [2] not to direct the lands from the intended purposes of the grantor no more than a tenancy from year to year. But the creation of a permanent tenancy in service vatan lands was set aside by the Privy Council in Madhavarao V. Raghunath [3] as it amounted to an alienation under sec 5 of the Bombay Act III of 1874 and sec 20 of Regulation XVI of 1827. The sections are wider in scope than the corresponding section of the Madras Hereditary village offices Act.

As regards religious and charitable service inams, permanent leases and leases for a long period as would practically amount to an alienation were held void, Refer Rama Varma V. Raman [4], Ramareddi V. Rangadasan [5], and Sundararaja V. Seshadri [6]. As to what leases can be termed leases for a long period, it is not clear. The decision in Rama Varma V. Raman, declared a Kanom for 96 years a long lease.

Leases for a short period might sometimes be accompanied by a premium. No hard and fast rule can

1. 8 M. I. A. 327.
2. 46 M L. J. 515.
3. 47 M. L J. 248—47 Bom. 798 P. C.
4. 5 Mad. 89.
5. 50 M. L. J. 589.
6. 54 M. L. J. 76.

be fixed with reference to such leases but a lease would be void where premium was taken and the rent reserved is not sufficient to maintain the holder of the office without prejudicially affecting the services. (Vide observations in Sundararaja V. Seshadri [1]). The real question as stated by Kumaraswami Sastri J. in the above case is 'whether the transaction in effect places the income from the lands beyond the disposal of the holder of the office and prevents him from enjoying the emoluments which were intended to enable him to discharge his duties properly.'

Where no premium is taken, the leases are voidable at the option of the Successor in office who would not be bound by them in the absence of justifiable necessity. As observed by the Privy Council in Vidyavaruthi. V. Baluswami Iyer [2] with reference to religious endowments, the estate should not be deprived of the benefit due to the enhancement of the value of the lands leased.

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1. 54 M. L. J. 76.
2. 44 Mad. 831 P. C.

CHAPTER IV.

RESUMPTION.

A consideration of the various personal and service grants leads to the important question of resumption with respect to the same. Resumption consists in putting an end to the grant and either recovering the land or imposing full assessment on it. When resumption takes place, the services would be remitted in the case of a service Inam and the conditions attached to the grant enforced in the case of personal and religious Inams. In Unide Rajah V. Pemma-Swami [1] a decision dealing with the resumption of Amaram tenure where actual dispossession was neither attempted nor intended, the Privy Council defined resumption as putting an end to the grant under which the grantors held remitting the services and imposing full assessment. That the land itself can be resumed was clearly laid down by Bhasyam Iyengar J. in Gunnaiyan V. Kamakshi Iyer [2]. The law relating to resumption proceeds on the footing that the sovereign was the owner of the soil as was held in the later Privy Council case of Suryanarayana V. Potanna [3]: Otherwise the Resumption by the Zemindar or the Government could only mean imposition of full assessment.

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1. 7 M. I. A. 128. 2. 26 Mad. 339. 3. 41 M. 1012.

The policy of the Government is however to impose the full assessment and not resume the land. As was observed by Bhashyam Iyengar J. in Gunnaiyan V. Kamakshi Iyer[1], no useful purpose would be served by the adoption of the latter course. The Government have also laid down in Board's Standing Order No 55 that the working principle to be adopted in cases of resumption was to impose full assessment on the land and confirm the land on the person actually in possession. The observations of Wallace. J. in Maniappa Udayan V. Sabhapati Asari [2] are to the same effect.

Resumption might be total or partial. The grantor might impose a full assessment on resumption or increase the assessment gradually as was done in Sri Sitaramaraju V. Ramachendraraju [3]. Again in personal inams, the resumption might be waived and the lands may be enfranchised on condition of paying quitrent which was proportional to the value and prospect of the reversionary interest claimed by the Government in the holding.

The Government claimed a prerogative reversionary right in hereditary personal Inams though such a right was never subjected to the test of Judicial decision for the simple reason that unenfranchised personal Inams were excluded from the cognisance of civil courts under Regulation IV of 1831 and Act. XXIII of 1871.

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1. 26 Mad. 339; Refer also 27 Mad. 16.

2. 53 M. L. J. 515.

3. 3 Mad. 367.

Who can Resume?

In Government tracts, the right of resumption vests always in the Government but in the Zemindaris, the right may either belong to the Government or the Zemindar. The Permanent Settlement Regulation XXV of 1802 when it conferred on the Zemindars, their heirs and successors a permanent property in their Zemindaris, and granted them sanads, expressly mentions that the permanent assessment of land tax shall be made exclusive of the revenue from Lakhiraj lands (or lands exempt from the payment of public Revenue) and of all other lands paying only a favourable quitrent (vide section 4). It follows that the Zemindar is the absolute owner of all lands on which the permanent assessment was fixed at the time of the Permanent Settlement. The following principles can be deduced as regards the relative rights of the Government and the Zemindar.

(*a*) Where the quit rents payable in respect of Inams in a Zemindari were treated as Zemindari assets and taken into account in fixing the Jumma or peshkush, the Zemindar is entitled to Inam lands on resumption or acquisition in other ways (Kandukuri Bala Suryaprasada Rao V. Secretary of State[1].)

(*b*) In cases of Lakhiraj lands and of lands paying only favourable quit rent the right of resumption vests in

1. 40 Mad. 886 P. C.

Government. Refer Secretary of State V. Rajah of Pithapur[1] and Tadikonda Veerabhadrayya V. Sonti Venkanna[2]. Village service Inams granted prior to permanent settlement are in the nature of lakhiraj grants and were not taken into account in fixing the peshkush- (Pitchayya V. Secretary of State[3], Secretary of State V. Sri Rajah Vasireddi[4] Refer also 56 M. L. J. Short Notes Page 5.)

(*c*) Where there is no direct evidence to show whether the revenue was or was not so included, a presumption arises that when the services are personal, the right of resumption belongs to the Zemindar. (Thiru venkata V Shaik Altoo [5]) If the services are personal to the Zemindar it may reasonably be assumed that the Government would not have exempted the land from the revenue but would have treated it for the purpose of settlement as a revenue paying land. Refer also Varada Raja Apparao V Gunnepalli Purnayya [6].

(*d*) In all cases of Darmilla grants, the Zemindar is the only person entitled to resume and not the Government (Vide Narasimha Rao V Secretary of state, [7] Vasireddi Chandramowli V Secretary of state [8]). If

1. 24 M. L. J. 530.
2. 1913 M. W. N. 782.
3. 11 L. W. 186.
4. 30 L. W. 132.
5. 50 M. L. J. 251 at Pages 255 & 256 ; Refer also 1 L.W.662— 25 I. C. 778; 20 M. L. J. 728; 1913 M. W.N. 959.
6. 30 M. L. J. 545—34 I. C. 626.
7. 36 I. C. 219—3 L. W. 573.
8. 37 M. L. J. 661—53 I. C. 332.

such darmilla grants have been enfranchised or resumed by Government, such proceedings on the part of the Government are Ultra Vires and do not in any way bind the Zemindar (Vide Narasimharao V Secretary of State [1] Suryanarayanaraju V Secretary of state [2] Ankama Naidu V Beeki Naidu [3] and Sri Rajah Vasireddi Chandramowliswara V Secretary of state [4])

Again where two parties join in making a grant, one cannot resume the grant at his mere pleasure and without the concurrence of the other party. In Rajah of Vizianagaram V Gangadu [5] the grant for a Kattu Kaluva Service was made by the villagers and the Zemindar together prior to the permanent settlement. It is not clear from the facts of the case how the villagers and the Zemindar happened to make the grant. The grant was held to be a public Service and the point whether a Zemindar could resume a pre settlement grant for public-services was not raised and discussed.

As regards the resumption of charitable and religious grants, the relative rights of the Government and the trustees have to be considered. It was held by Miller and Sadasiva Iyyer in Sarayya V. Vaidynatham [6] that the right of resumption consequent on the neglect of services belonged to the Government and not the

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1. 36 I. C. 219.
2. 1 L. W. 662.
3. 1927 Mad. 449.
4. 37 M. L. J. 661—53 I. C. 332—10 L.W. 372.
5. 1927 Mad. 1001.
6. 27 M. L. J. 57.

trustees. To the same effect was the later decision in Chiranjivi V. Raja Manikyarao [1]. In both the cases, the grants were continued by the Government and the trustees were non-suited on the ground that they had not made out any title to the property. It does not also appear whether the grants were pre or post settlement.

Grounds of Resumption.

The next point that has to be discussed is the much debatable question as to when and under what circumstances the right of resumption can be exercised. The decisions are not uniform on the subject though a clear lead has been given in the earliest cases Babu Kaldeep Narain Singh V. Mahadeva Singh [2] and Forbes and Meer Muhammed Tuqquee [3]. A perusal of both the cases would convince us that the service grants can be classified for the purpose of resumption into

(*a*) Grants burdened with service.

(*b*) Grants in lieu of wages

Grants for past and future services which the Privy Council in Forbes V. Meer Muhammed mentions as having been made *pro servitius impensis et Impendendis* partly as a reward for past and partly as an inducement for future services partake of the nature of a grant burdened with service.

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1. 27 M. L. J. 179. 2. 6 W. R. 199. 3. 13 M. I. A. 438.

A grant burdened with Service is an absolute grant to which is attached the obligation of performing the Services. The breach of the condition by the non-performance of the Services attached gives the grantor a right to resume such a grant (Refer Thiruvenkata V. Shaik Altoo [1]). So long as the grantee is willing and able to perform the Services, the grantor cannot resume the grant even though he does not require such Services any longer (Refer Vadisapu Appandora V. Vyricherla Veerabhadraraju [2], Gajapati Maharaja V. Sonti Prahlada [3] and Mrutyunjayudu V. Rajah of Pithapur [4]). Nothing but a wilful default in the performance of the Services entitles the grantor to resume but the grantor can make it a condition of the grant that it is resumable when the Services are no longer required [5] or when they are not continuously performed [6].

The nature of a grant in lieu of wages is thus described in Thiruvenkata V. Shaik Altoo [1]. 'The relation between the grantor and grantee is that of a Master and Servant. Instead of remunerating the Servant by wages, the grantor grants the land to him and treating the rent payable as equivalent to wages, the grantor makes a remission of the rent. The contract however is one of Service and as the master can on

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1. 50 M. L. J. 251.
2. 1911 (2) M. W. N. 406.
3. 1914 M.W. N. 179.
4. 30 M. L. J. 132 F. B. Refer also 58 M. L. J. S. N. 27.
5. 43 Bom. 37.
6. 3 Mad. 367

terminating the employment cease to pay wages, in like manner he may resume the grant on dispensing with services. The servant cannot compel his master to continue to employ him on the score that he is willing to serve. In the case of these grants, the grantor can after due notice resume the grant and demand full assessment. In the absence of a due notice, the suit is liable to be dismissed (Refer Lakshmi V. Chendri [1], Narasayya V. Venkatagiri [2], Radhaprasad V Buddhu [3] and Unide Rajah V. Pemmaswami [4]).

In laying down this clear distinction between grants burdened with service and in lieu of wages, their Lordships of the Privy Council agreed with the observations of Jackson. J in Narainsing V. Mahadev Singh [5]. This distinction was followed in subsequent cases and the courts have decided the resumability of the grants on the facts of each case (Refer Sitaramaraju V. Ramachendraraju [6] Sri Sobhanadri V. Venkata Narasimha [7] Ramachandra V. Sridhar [8], Yellava V. Bhimappa [9] Chandrappa V. Dasappa [10] Baslingappa V. Chendrappa [11] Thiruvenkata V. Shaik Altoo, [12] Chowdanna V. Venkatapathi Nayanim garu [13] and Rajah of Vizianagaram V. Vadagari Ramaswami [14].

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1. 8 Mad. 72.
2. 23 Mad. 262.
3. 22 Cal. 938.
4. 7 M. I. A. 128.
5. 6 W. R. 199.
6. 3 Mad. 367.
7. 26 Mad. 403; 29 Mad. 52 P. C.
8. 37 Bom. 509.
9. 39 Bom. 68.
10. 43 Bom. 37.
11. 18 Bom. L. R. 695.
12. 50 M. L. J. 251.
13. 54 M. L. J. 429.
14. 52 M. L. J. 283.

The case in Radha Prashad V. Buddhu [1] is a leading case from another standpoint of view. The learned Judges there observed that there were two classifications of grants 1. Those for private or personal services and those for public service. The former are resumable at the will and pleasure of the grantor and the latter are not 2. The second division was into grants burdened with service and in lieu of wages as observed by the Privy Council. But they further observed on the facts of the case that the presumption of resumability in the case of personal service grants was not rebutted by the defendant by showing that it was one burdened with service. The two classifications are thus viewed as inter dependent and the division into private and public grants was invoked to draw a presumption one way or the other.

But later rulings have taken it for granted that the decision in Radha Prashad V Buddhu[1] laid down an independent classification of service grants into public and private for the purpose of resumability (Vide Thiru Venkata V. Altoo [2] Yellava V. Bhimappa [3] and other Bombay cases)

The Bombay High Court has consistently refused to lay down any such classification and strictly followed the Privy Council in dividing grants into those burdened with service and in lieu of wages as the two classes can each of them be subdivided into public and private grants.

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1. 22 Cal. 938. 2. 50 M. L. J. 251. 3. 39 Bom. 68.

Beaman J. further observed in Chandrappa V. Dasappa[1] that such a distinction is vicious and ignores the Privy Council classification. The division laid down by the Privy Council is thus the only criterion though various legal presumptions have been drawn from the private or public nature of the services and from the Post or Pre-Settlement nature of the grants.

Presumptions of law.

In Raja Nilmanee Singh V. Government [2] the court held that a Rajah could not resume a Jagir granted on condition of performing certain services, unless the services were shown to be personal to the Rajah.

In Sanyasi V. Salur Zemindar [3], it was held that a Zemindar could ordinarily dispense with the services if personal and resume the tenure or enhance the quitrent at his pleasure. The learned Judges further observe that it is only in the nature of a presumption.

The decision was followed in Mahadevi V. Vikrama[4] It was decided that if the lands were held on service tenure, it was resumable by the Zemindar for the time being in possession. The rulings in Unide Rajah V. Pemmaswami[5], and Sanyasi V. Salur Zemindar[3] were referred to. The Privy Council ruling in Forbes V. Meer Muhammad [6] was not considered. To explain the apparent

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1. 43 Bom. 37.
2. 18 W. R. 321.
3. 7 Mad. 268.
4. 14 Mad. 365.
5. 7. M. I. A. 128.
6. 13 M. I. A. 438.

inconsistency, Venkata Subbarao J. in Tiruvenkata V. Shaik Altoo [1] observed that the decisions were presumably referring to grants in lieu of wages. But the decisions in Sanyasi V. Salur Zemindar and Mahadevi V. Vikrama [2] were only laying down a presumption that the grant is in lieu of wages, if the services are personal to the grantor. The decision in Radha Prashad V. Buddhu [3] has already been referred to as having laid down a presumption that grants for personal services are primafacie resumable, on the authority of the two Madras cases. This was followed in Gajapati Maharaju V. Sonti Prahlada[4].

But in Vadisapu Appandora V. Vyricherla Veerabhadraraju [5], the presumption above referred was reiterated in the case of Darmilla personal grants. The presumption of resumability where the Services are personal applies to all grants whether Pre or Post Settlement. This presumption was held not to exist by Venkata Subbarao J. in Tiruvenkata V. Shaik Altoo [6]. The learned Judge studied the caselaw in detail and dissented from the cases which laid down such a presumption either expressly or by implication.

In Vizianagaram Maharajah V. Vadagari Ramaswami [7], Ramesam J. dissents from the observations in Thiruvenkata V. Shaik Altoo[6] and laid down the following propositions of law.

1. 50 M. L. J. 251
2. 14 Mad. 365.
3. 22 Cal. 938.
4. 1914 M. W. N. 179.
5. 1911 (2) M. W. N. 406 Refer 30 M. L. J. 132 F. B.
6. 50 M. L. J. 251.
7. 52 M. L. J. 283.

(a) Darmilla Inams granted for Services are prima facie resumable where there is no evidence as regards the nature of the Services. The learned Judge seems to have in mind, the presumption drawn in the early cases that the *Zemindar* is entitled to resume if the grant was included in the assets of the Zemindari or was post settlement. Such a presumption exists as between the Zemindar & the Government alone but the Zemindar in all cases has to make out his right to resume

(2) A further presumption was laid down following Radha Prashad V. Buddhu[1], that where the service is public, the grant is not resumable. This presumption can only be subject to the Privy Council classification of grants into those burdened with Service and those in lieu of wages, according to the view taken already of the decision in Radha Prashad V. Buddhu.

If the services were private, a presumption arises that it is in lieu of wages and therefore resumable Vadisapu Appandora V. Vyricherla Veerabhadraraju [2], Viswesvara V. Gorla Budarada [3]. This presumption applies whether the grant is presettlement or post Settlement.

But the presumption so arising is very slender and rebuttable (Mruthyunjayudu V. Rajah of Pittapuram F. B.) [4]

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1. 22 Cal. 938.
2. 1911 (2) M. W. N. 406.
3. 8 M L. T. 82.
4. 30 M. L. J. 132 F. B.

Even where the presumption arises, if the grant shows that the land was given for past and future services, the grant is not resumable (Forbes V. Meer Muhammed[1] and Yamuna Bai V. Lagmanna[2].)

On the facts the grant was held to be one for past and future Services and therefore not resumable. The decision recognises the distinction laid down by the Privy council in Forbes V. Meer Muhammed but goes a step further to enunciate the presumptions in case of public and private services. This case might be viewed as an attempt to reconcile the Privy Council distinction with the distinction laid down in Radha Prasad V. Buddhu[3]. The distinction between public and private services cannot be very clearly laid down as has been noticed earlier P. 15 ante and where services are distinctly held to be either private or public the decision in Rajah of Vizianagaram V. Vadagiri Ramaswami[4] in the light of the classification made by the Privy Council would determine the resumability of any grant. But where it is not possible to say whether services in a particular case are private or public, the distinction observed by the PrivyCouncil into those burdened with service and those in lieu of wages is the only criterion. In a recent case reported in 58 M.L.J. Short Notes 27, Ananthakrishna Iyer J. held that Kattu Kalava Service Inam lands were for public purposes as opposed to the private service of the Zemindar and were not resumable

1. 13. M. I. A. 438.
2. 21 Bom. L. R. 820.
3. 22 Cal 938.
4. 52 M. L. J. 283.

by the Zemindar so long as the grantee was willing to do the Services. The learned Judge seems to have held by implication that grants for public services are always resumable. This is too broad a proposition and cannot be accepted as correct law as a public service grant might be either one burdened with Service or one in lieu of wages.

Facts from which the nature of the grant can be deduced.

Where the original grant is produced, the nature of the tenure has to be decided with reference to the terms thereof. Where the grant recited 'at the will and pleasure of the grantor' and 'So long as your Highness pleased', the phrases were only meant to suggest the exalted position of the grantor and the inferiority of the grantee. (Refer Vizianagaram Maharajah V. Sitaramaraju [1], Mrutyunjayudu V. Rajah of Pithapur [2] and 20 Law Weekly short notes 79). In the last mentioned case Srinivasa Iyengar. J observed that such expressions govern the deed and are not mere terms of subserviency. Where the grant expressly recited that it was granted for wages, the grant would be construed as one in lieu of wages[3]. Where the grant is in favour of a person addressed as 'Nakesh so and so', the grant would not be one in lieu of wages and the expression is only descriptive of the grantee. Mrutyunjayudu V. Rajah of Pithapur[2].

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1. 19 Mad 100. 2. 30 M. L. J. 132 F. B. 3. 30 I. C. 416

Where the grant is not forth coming, the best evidence to indicate the nature of the grant would be the Inam register and the Inam statements. But the observations of the Circuit committee as regards the resumability of a grant were considered to be of no authority in Sri Sobhanadri V. Venkata Narasimha[1] as the Government was interested in making the same so as to include the full value in determining the peshcush payable by a zemindar.

In the absence of the original grant, certain circumstances were held sufficient in Sri Sobhanadri V. Venkata Narasimha Apparao [1], to give rise to the presumption that the grant was one burdened with service and therefore not resumable.

(a) No office of any particular description was conferred upon the grantee but an obligation of a feudal character was imposed on him namely to provide a Naik and fourteen peons, to guard the zemindar's fort and treasury, and attending upon the zemindar in hunting and military excursions.

(b) The services were rendered intermittently and not continuously.

(c) Money was paid as batta while the services were performed.

(d) A uniform rent was paid for more than 100 years without any alteration. In Sri Sitaramaraju

1. 26 Mad. 403.

V. Ramachendraraju [1] the enhancement of Kattubadi was held a sufficient ground to presume that the grant was one in lieu of wages but in Idubilly Siyyaddi V. Rajah Visveswara [2] it was held that it implied no more than a readiness to accept a lower rate of remuneration for the services than they have been receiving originally.

(e) The grant was enjoyed hereditarily from father to son.

(f) In later years the services were not in frequent requisition.

(g) There have been no attempts at resumption or enhancement of the rent or at changing the hereditary nature of the tenure.

(h) The zemindar himself accepted leases and purchased some of the lands which showed a consciousness on his part that the mokhassadars had a permanent tenure albeit to a burden of service.

The following tests have been further laid down in later decisions as determining the distinction between a grant burdened with service and one in lieu of wages.

(a) If there be no other reason for the grant except that the grantee should perform the services in future, the grant is one in lieu of wages—Chowdanna V. Venkatapathi Nayanim garu [3]

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1. 3 Mad. 367. 2. 30 I. C. 416. 3. 50 M. L. J. 429.

(b) If a salary was paid to the grantee prior to the grant and continued subsequently, it was held that the grant was burdened with service. Mrutyunjayulu V. Raja of Pithapuram [1].

(c) If the grant was for past services, it was burdened with service. Vide Idubilly Siyyaddi V. Sri Rajah Visveswara. [2]

(d) Whether similar tenures were resumed at any time by the zemindar. It was mainly on this ground and on the ground that the suit tenure was attempted to be resumed prior to suit, that the lands were held resumable in Appandora V. Vyricherla Veerabhadraraju [3].

(e) Where the evidence is to the effect that a particular grant was for services and it is not clear whether those services were past or future, a presumption arises that the services were rendered in the past and the grant is not resumable. (Bashlingappa V. Chendrappa.[4])

(f) The public or private nature of the services. A presumption arises in cases of post-settlement personal grants that they are resumable but the presumption is rebuttable (vide 52 M. L. J. 283 ; 1911 (2) M. W. N. 406 etc., contra 39 Bom 68; 50 M. L. J. 251.)

(g) Certain services were held to be merely nominal services and the grants were held not resumable (i. e.) the Vazhipadu grant which consisted in offering

1. 30 M. L. J. 132. 2. 30 I. C. 416—18 M. L. T. 142.
3. 1911 (2) M. W. N. 406. 4. 18 Bom. L. R. 695.

rice in a temple, a greater part of which was returned to the grantor. It was held [1] that 'the obligation to make the show of an offering being a nominal obligation was merely a moral one.' Attendance at the court on ceremonial occasions was held to be not such a condition of the grant as to entail forfeiture (Refer Maharajah of Jeypore V. Rukmini[2].)

(h) It has been held by Srinivasa Iyengar. J in 20 L. W. (S. N.) 79 that the primary object of the grant, the names by which the lands are described, and treatment by both the parties will have also to be looked into in considering the nature of the tenure. Applying the tests laid down in 29 Mad 52 P. C. Venkata Subbarao J held that the grant was burdened with service and therefore not resumable while Srinivasa Iyengar. J held that the grant was in lieu of wages (vide 26 I. C. 78 also where the judges differed as to the effect of the various circumstances proved in the case).

The maintenance grants and life grants are *Prima Facie* resumable on the death of the grantee in the absence of an express condition of heritability[3]. Where the grant is of a heritable nature, it is resumable in the absence of lineal heirs.

It remains to consider the grounds of resumption laid down by the Government in the case of religious or

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1. 1915 M. W. N. 346 17 L. W. 514
2. Affirmed by the P. C. in 1919 M. W. N. 271.
3. 21 I. C. 93.

charitable grants, artizan grants and Dasabandham grants, in Board's Standing orders 54, 55, & 56.

Religious or charitable grants (vide B. S. O. 54.) The officers of the Government should with due care see that the objects of the grant are fulfilled. All reasonable endeavours ought to be made to secure the continuance or revival of such institutions, temporary intermissions of service ought to be condoned and due notice should be given before resumption. Religious or charitable Inams can only be resumed in cases where they are alienated or otherwise lost to the institution or the service to which it belonged, or where the terms of the grant are not observed. Transfer by sale, lease or mortgage will not be treated as an alienation where it is made subject to the payment to the institution or in support of the service, the net assessment on the land. If the Inam is alienated and the services are performed by the alienee, the alienee is recognised as the Inamdar, and the Inam will not be resumed.

The grantee of religious or charitable service grants need not account for the income of the lands and so long as the buildings or institutions are maintained in an efficient state and services are performed according to the conditions of the grant the Inams will not be interfered with[1]. Partition also among joint trustees is not objectionable if it is for better convenience in the performance

1. 1922 M. W. N. 74;

of their duties[1]. In Sikander Rowther V. Secretary of State[2] 'a mere alienation of trust property was held not to entail forfeiture if the trustees kept the mosque clean and in good repair, put up the lights and kept it as a place fit for worship in the usual manner.' In Secretary of State V. Gulam Mahaboob[3], Abdur Rahim and Spencer JJ held that temporary alienation by way of mortgage and leases for a long period and even misappropriation of trust funds would not strictly be a breach of the con lition of the Inam grant so long as the service is performed.

Standing order 54 cl 6 (a) provides that the resumed Inams should be assigned for other specific religious or charitable objects in accordance with the doctrine of Cypres or should be reassigned in a suitable manner where the mode of applicati n is incapable of effectuation or undesirable as in the case of a Nandavanam grant or a dancing girl's grant. It is only on the failure of such reassignment that the income from resumed Inams could be credited to general revenues.

Artisan Inams. The resumption of artisan Inams by Government is provided for in Board's Standing order 55. The artisan Inams are divided into 3 classes.

1. Inams for the necessary services like the Barber's service.

2. Inams for services which are unnecessary but are regarded by ryots as of much importance ie. purohit and panchangam service.

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1. 1922 M. W. N. 74 at P. 76; 27 Mad. 192.
2. 5 L. W. 402.
3. 1919 M. W. N. 736—42 Mad. 673.

3. Inams for other unnecessary services e. g. the shroff service. As regards classes 1 & 2, the Government does not usually resume the Inams except where there has been an alienation in whole or in part of the service Inam, or a persistent default in service. Inams of class (3) can be resumed though service is being performed. Further the resumption is only of the assessment on the land and if land has to be resumed, the collector has to address the Board of Revenue.

The Dasabhandham Inams are resumable by the Government, (vide S. O. 56) only if the Inamdar fails to carry out the service after due notice. This is only in the Government tracts; in proprietary estates the Govern ment does not claim any reversionary interest even though the grants were in existence at the time of the permanent settlement. The reason for such a policy is that as the responsibility of maintaining the tanks, channels and other irrigation works is upon the zemindar, the reversionary right in such Inams should be conceded to him.

Burden of proof in cases of Resumption.

An important question which arises in cases dealing with Resumption is the Burden of proof in suits between the Government and the Zemindar and in suits between the zemindar or the Government and the grantee or his successors. We proceed to discuss the Burden of Proof with reference to both these classes of cases.

Burden of proof in suits between Zemindar and Government.

In two early Privy Council cases, Forbes V. Meer Muhammed Tuquee[1] and Harihar Mukhopadhyaya V. Madhoo chander[2] certain general observations are made which show that where there were presettlement grants rent-free, the presumption arises that such grants were treated as Lakhiraj and that the burden of proof accordingly lay upon the zemindar to show that the lands were included in the mal assets of the zemindari. But it has to be noted that both the suits were between the zemindar on the one hand and the grantee on the other and it is but proper in such cases, where the terms of the permanent settlement and the sanad are within the peculiar knowledge of the zemindar, that the burden of proof should be thrown upon the zemindar and not on the grantee. As to whether there is a presumption that the lands are included in the mal assets of the zemindari, the decisions of the Calcutta High Court are not uniform, those in 6 Cal 543; 6 Cal 666; 4 C. L. J. 548 laying the burden on the ryot to show that the lands are lakhiraj and those in 9 Cal 843 and 12 Cal 182 holding contra.

In Rajah Nilmani Singh V. Government[3], Sir Barnes Peacock observed that in the case of Presettlement personal service grants 'the Government would not have allowed any portion of their revenue in consideration of

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1. 13 M. I. A. 438. 2. 14 M. I. A. 152. 3. 6 W. R. 121.

private services to be rendered to the zemindar.' The observation was quoted without disapproval in Rajah Nilamani Singh V. Bakranath Singh [1] by the Privy Council The cases in Venkata Rangayya Apparao V. Appalaraju [2] and Rajah Parthasarathi Apparao V. Secretary of State, [3] following the observations in 6 WR 121 held that the burden lies upon the Government to show that the lands granted before the Permanent Settlement and reserving private or personal services were not included in the assets of the zemindari. In the latter case Tyabji-J. puts it on the ground that the production of the records of the Permanent Settlement would conclusively show whether the lands had been assessed as part of the zemindari or had been excluded as lands paying only favourable quitrents under sec. 4 of the Permanent Settlement Regulation and that as the Government had special means of such knowledge the burden will lie on the Government under sec. 106 of the Evidence Act and further that the presumption under sec. 114 (f) should be drawn against the Government for non-production of the documents. It has been held in Ramachendra V.Secretary of State [4] that if the Government claims to resume service Inam lands in the zemindari, the duty of proving express reservation lies upon the Government (The case dealt with Chowkidari Chakran lands).

1. 18 W. R. 321.
2. 20 M. L. J. 728.
3. 38 Mad. 620.
4. 43 Cal. 1104—37 I. C. 223.

Burden of proof as between the Grantor and Grantee.

There is a presumption in Government grants that lands granted as service Inam are resumable by the Government. The Burden lies on the grantee to show that the grants are not resumable. (Vide Mrutyunjayudu V. Rajah of Pithapur[1]).

So far as suits between the zemindar and grantee are concerned, it has been laid down in a long series of decisions that the zemindar has to make out his right to resume (Refer Forbes V. Meer Mahomed [2], Thiru Venkata V. Shaik Altoo [3], Lakham Gowda V. Keshav [4] Sakreppa V. Gireppa [5], Baslingappa V. Chendrappa [6] 20 L W short notes 79).

The zemindar has first to prove that the grant was included in the zemindari at the settlement. The Privy Council has held in Secretary of state V. Kirtibas Bhupati [7] that whenever a question anises whether a particular property has passed to the zemindar under the Permanent Settlement, the fact that the property is within the ambit of the zemindari raises a presumption in favour of its having been so included (Refer 20 L. W short notes P-79 at P-81).

The zemindar has next to prove from the nature of the services that the grant was either one in lieu of

1. 30 M. L. J. 132.
2. 13 M. I. A. 438.
3. 50 M. L. J. 251.
4. 28 Bom. 305.
5. 39 Bom. 68.
6. 18 Bom. L. R. 695.

wages or if burdened with service, the grantee was not able and willing to perform the service. But as has been already noted that a presumption of resumability arises where the services are personal (Refer Sanyasi V. Salur Zemindar [1], Mahadevi V. Vikrama [2], Radha Prashad V. Buddhu [3]) The presumption was reiterated in respect of Darmilla personal grants in Raja Visveswara V. Gorla Budarado [4] Vadisapu Appandora V. Vyricherla Virabhadraraju [5] Gajapati V. Sonti Prahlada [6] and Rajah of Vizianagaram V. Vadagari Ramaswami [7]. The Burden is then shifted on to the grantee in such cases.

The Jurisdiction of Civil Courts.

The next point to be considered is the jurisdiction of Civil Courts in suits questioning the right of resumption, whether resumption is an Act of State or whether it can be questioned in the civil courts like claims arising between the Government and the subjects. Lord Kingsdown in Secretary of Sate V. Kamachee Boye Saheba [8] discusses the matter in clear terms, 'Was it a Seizure by arbitrary power on behalf of the Crown of Great Britain of the dominions and property of the neighbouring state, an act not affecting to justify itself on grounds of Municipal law or was it in whole or in part a possession taken by the Crown under the colour of legal title

1. 7 Mad. 268.
2. 14 Mad. 365.
3. 22 Cal. 938.
4. 1910 M.W. N. 436.
5. 1911 (2) M. W. N. 406.
6. 1914 M. W. N. 179.
7. 52 M. L. J. 283.
8. 7 M. I. A. 476.

of the property of the late Rajah of Tanjore in trust for those who by law might be entitled to it on the death of the last possessor, and on the facts held that the seizure of the Tanjore Raj was an act of sovereign power and cannot be questioned in the civil courts. The decisions in The Nabob of Arcot V. East India Company and East India Company V. Syed Ally (1827) [1] were quoted with approval. The latter case shows on an examination of the facts reported that the East India company having acquired the Sovereign rights in the Carnatic from the Nabob resumed the Jagir from one Assimkhan and regranted it to one of his sons ignoring the other heirs under the Muhammedan law. There is absolutely no distinction between the resumption in this case and that exercised usually by zemindars in the case of service grants and it cannot be in any view regarded as an act of Sovereign power. The full judgment of their Lordships has not been reported and the report in 7 M. I. A. 555 was prepared from the papers in Appeal and the short-hand notes In Forester V. Secretary of State[2], the observations of Lord Kingsdown in the Tanjore case were followed and the Privy Council held that the case was only dealng with resumption of lands previously held from Government under a particular tenure upon the alleged determination of that tenure. The following observation of their Lordships is important 'If by means of the continuance of the tenure or any other cause a right be

1. 7 M. I. A. 555.

2. 18 W. R. 349.

claimed in derogation of this title of the Government, that claim like any other arising between the Government and its subjects would *Prima Facie* be cognisable by the municipal courts of India. This is the correct view of the matter and since then in a number of cases the illegal resumption by the Government was allowed to be questioned in the civil courts (vide Secretary of State V. Gulam Mahaboob[1]).

Resumption and Adverse Possession.

Adverse Possession can commence either against the Government or the Zemindar only where the subject matter of the grant was enjoyed irrespective of the obligations attached to it and the nature of the grant. In the case of Service Inams, where the land was resumable on the service ceasing, it was held in Bhimappa V. Ramachendra [2] that the claim to resume was barred after twelve years from the cessation of service. Mere non-performance or cessation of service does not render the holding adverse; there should be the active assertion of an adverse right (Refer Narayan V. Rama [3]). A refusal to perform service or a claim to hold the lands free from service was held sufficient to constitute adverse possession in Kumara Gowda V. Bhimaji [4]. An analogy has been drawn between the nonpayment of rent between landlord and tenant and the non-performance of service by the office holder.

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1. 42 Mad. 673.
2. 22 Bom. 422.
3. 7 I. C. 252.
4. 23 Bom. 602.

The period of limitation which would govern cases of adverse possession in Service Inams depends upon i what was attempted to be resumed by the Zemindar or the Government the Melvaram or the land itself ii whether adverse possession is claimed as against the Government or the office holder.

Where adverse possession is claimed agaist the office holder, so long as the Government or the Zemindar does not intervene to assert their rights, adverse possession would be perfected according to the ordinary rules laid down in Article 142 & 144 of the Indian Limitation Act. Such adverse possession however cannot be availed of as against a successor in office unless the right of the Government or the Zemindar was barred at the time when the successor is appointed.

Where the Zemindar or the Government seek to resume the assessment only on the land it looks as if no period of limitation is provided. The right of the Sovereign power to levy assessment was held to be not a right conferred by legislative enactment but one conferred by the exercise of sovereignty and no limitation is placed on the exercise of such a right by any statute or law. This was so laid down in Boddupalli Jagannatham V. Secretary of State [1] where the unreported decision in S. A. 1352 of 1897 was followed. The right to levy assessment on any land is also a recurring right and the

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1. 27 Mad. 16.

exercise of such a right could not be prevented by any law of limitation as a fresh cause of action arises every year in favour of the Zemindar or the Government.

Where the land itself is resumed by the Zemindar or the Government, i e. where the original service grant consisted of both the warams, different considerations arise. Where the land has been enjoyed by the grantee or any third party independent of the obligations attached to it, it is open to the person in possession to prove that it was no Inam at all or that the right of the Government or Zemindar to resume was put an end to by possession for periods of sixty or twelve years respectively at the time of resumption. Nothing short of a prescriptive title would avail in such cases to defeat the rights of the Government or Zemindar. This was so held by Odgers J. in S A. 287 & 288 of 1921 and in Avasarala Venkatrao V. Mangarao [1], and Gourikantam V. Ramamurti [2]. The cases were cited with approval by Wallace J. in the recent decision of Maniappa Udayan V. Sabhapathi Asari [3]. The period prior to resumption cannot be tacked to the period subsequent thereto so as to make up the period necessary for perfecting prescriptive title. The alienation of service Inams is prohibited by statute as opposed to public policy and the office holder for the time being holds the lands merely as a remuneration for his services and no third

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1. 1925 M. W. N. 808—49 M. L. J. 71.
2. 46 M. L. J. 482 at 490.
3. 53 M. L. J. 515 at 519.

party can claim a right to the land unless he has by prescription acquired such right as against the Government or the Zemindar.

The earlier rulings in Neelachelam V. Kamaraju [1] and Dhanushkotirayudu V. Venkataratnam [2] laid down that Art 144 applied and that a person in adverse possession of lands annexed to the office of a Karnam for over the statutory period acquires a prescriptive title against the holder of the office and his successors. Wallace J. in Gourikantham V. Ramamurti [3] considers them bad law in the light of the P. C. decision in Venkata Jagannatham V. Virabhadrayya [4] and deems them to have been impliedly overruled. The case of Majavath Ali V. Mujafar Ali [5] which refered to the case of a Kaji Inam was distinguished as relating to a personal Inam.

In a personal Inam as distinguished from a Service grant, the grantee is owner of the land subject to certain restrictions and the Government on resumption releases its reversionary interest in the land The law relating to adverse possession in such Inams is the same as is applicable to property of private individuals Art 144 of the Indian Limitation Act applies to such cases. In Majavath Ali V. Mujafar Ali [5], the learned Judges applied the twelve year's rule to a Khaji Inam following the rulings in Neelachelam V. Kamaraju [1] and Dhanushkotirayudu V. Venkataratnam The P. C. in Mushti's

1. 14 M. L. J. 438.
2. 38 M. L. J. 320.
3. 46 M. L. J. 482.
4. 41 M. L. J. 1—44 Mad. 643 P. C.
5. 45 M. L. J. 791.

case was referred to and distinguished on the ground that no question of adverse possession arose in that case. The distinction between the personal and service Inams does not seem to have been observed. The decision so far as it obliterated the distinction is not correct.

CHAPTER V.

ENFRANCHISEMENT OF INAMS.

The subject of resumption is closely connected with that of enfranchisement. The relative rights of the Government and the Zemindar with respect to resumption have been considered in a previous chapter. The Government had for a long time kept alive their interests reversionary or otherwise in Service, Personal and Charitable Inams. The object of enfranchisement was thus in the words of Sadasiva Iyer J. in Secretary of State V. Srinivasachari to free the owners of the lands from the liability to forfeiture if they made alienations to a stranger and to convert the lands into ordinary heritable and alienable property. The nature of enfranchisement and the incidents there of are different in the case of service, personal and charitable Inams and before we consider them it is desirable to note the various legal enactments with reference to enfranchisement.

Regulation XXXI of 1802 was passed to try the validity of the titles of the persons holding or claiming to hold lands exempted from the payment of Revenue under grants not being Badshahi or Royal Grants. Very few of the Inamdars and Zemindars responded to the call and the registers maintained under Sec. 15 of the regulation were neither perfect nor complete. Regn. IV of 31

exempted from the jurisdiction of ordinary Civil Courts all personal or hereditary Inams where the Government claimed a reversionary interest, except in cases where express sanction has been obtained from Government. Regn. VI of 31 which has since been repealed by Act III of 1895, dealt with the alienation of Service Inams by mortgage, sale, gift or otherwise. Sec 3 of the regulation barred the jurisdiction of Civil Courts and invested the Collector with authority to adjudicate upon claims with respect to such service Inams.

The Inam rules were framed in 1859 by the Government whereby the reversionary rights of the Government were surrendered by them to the Inamdars in consideration of an equivalent annual quitrent and the Inam lands were enfranchised and placed in the same position as other descriptions of landed property in regard to their future succession and transmission[1].

Act IV of 62 declared that the title deed issued by the Inam commissioner or an authenticated extract from the register of the commissioner or Collector should be deemed sufficient proof of the enfranchisement of land previously held on Inam Tenure. Act IV of 1866, The Madras enfranchised Inams Act exempted the enfranchised village or other service Inams from the operation of Regulation VI of 1831 thus giving the jurisdiction to the ordinary Civil Courts with reference to such Inams. Doubts having arisen with respect to

1. Preamble to Act IVof 1862.

the true intent and meaning of the above Acts, Act VIII of 69 was passed which declared that the title deed issued by the Inam commissioner should not be deemed to define, limit, infringe or destroy the rights of any description of holders or occupiers of lands from which the Inam is derived or drawn or affect the interest of any person other than the Inam holder named in the title deed. The conflict occasioned by this enactment will be discussed with reference to the effect of enfranchisement proceedings. So far as proprietary estates were concerned, the Government reserved in itself the power to enfranchise from the condition of service by the imposition of quit rent, all lands which have either been granted or continued in respect of or annexed to the village offices by the State (Refer Sec. 17 of Act II of 1894).

The Inam commission dealt with personal, Service charitable and Religious Inams. The commission enfranchised only such of the Inams wherein the Government had the reversionary interest or the right of resumption. In personal Inams, the Government allowed the holders to change their restricted tenure into a permanent Freehold with unrestricted powers of alienation and gave up its reversionary interest in such Inams. The Service Inams attached to village establishments were enfranchised only when the services had been otherwise provided for. The policy of the Government in enfranchisement proceedings was not to disturb existing possession as was held in Gunnaiyan

V. Kamakshi Iyer [1] and Subbarayudu V. Narasimha row [2] but only to impose the full assessment on the land enfranchised.

Nature of Enfranchisement.

The nature of enfranchisement differs according as the Inam is personal or attached to service. In the case of a personal Inam the Government has only a remainder or reversion. On enfranchisement they give up their reversionary interest in consideration of an annual quitrent The estate of an Inamdar is thus enlarged to an absolute ownership. While in the case of a service Inam, the ownership is always in the Government. The office holder enjoys the income as his wages and his right to the land is co-extensive with the tenure of the office. The Government may choose at any time to disannex the Inam from the office and fix money wages or other remuneration there for. (Vide observations of Wallace J. in Gourikantam V. Ramamurti [3].) The enfranchisement of a personal Inam would thus amount to a release of the reversionary interest of the crown and the enfranchisement of a service Inam amounts to a resumption and regrant in favour of the enfranchisee.

The decision of Bhashyam Iyengar J. in Gunnaiyan V. Kamakshi Iyer ignored the distinction noted above and Inams whether personal or service were placed on the same footing with reference to enfranchisement.

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1. 26 Mad. 339. 2. 47 M. L. J. 558. 3. 46 M. L. J. 482.

The Privy Council in Musṭi Venkata Jagannadha V. Veerabhadrayya[1] has set at rest the conflict which was occasioned by the Judgment of Bhasyam Iyengar and Moore JJ. in Gunnaiyan V. Kamakshi Iyer [2] and the subsequent Full Bench case of Pingali Lakshmipathi V. Chelamayya[3].

The effect of this distiction between the enfranchisement of personal and service Inams is that in the case of a service Inam, the enfranchisee gets the Inam under a new title from the Government, the rights of the other family members having been put an end to, whereas in the case of a personal Inam, the enfranchisee takes the Inam subject to such rights. Thus in cases where the enfranchisement of a service Inam was in the name of a widow, it has been held that she takes the property absolutely and the Government cannot be said to have thought in terms of Hindu Law so as to delimit her Estate to a life Estate[4]. The decision of Munro & Abdur Rahim JJ. in Subrayachetti V. Ayyaswami[5] based on 26 Mad. & 30 Mad. is wrong law as it limited the widow enfranchisee's interest to a limited interest. In the Full Bench case Pingala Lakshmi Pathi V. Bommireddipalli Chelamayya [3] the grant was in favour of a Hindu widow and reversioner and the learned Judges construed the joint grant as giving only a limited Estate

1. 41 M.L.J.1—44 Mad. 643. 2. 26. Mad. 339. 3. 30 Mad.434.
4. M. L. J. 579—28 L. W. 530 55; 50 M. L. J. 46; 16 L. W. 228; 23 M. 47; 21 M. 100; 21 M. 47 5. 32 M. 86.

to the widow and further discussed the scope of the earlier Full Bench in Venkata V. Rama [1] and ultimately adopted the observations of Bhashyam Iyengar J. in Gunnaiyan V. Kamakshi Iyer [2].

The Development of the Law.

It is necessary in this connection to consider the development of the law with reference to enfranchisement and the interpretation put upon the various enactments.

The earlier rulings of the Madras High Court in Cherukuri Venkanna V. M. L. N. Sastrulu [3] and Vissappa V. Ramajogi [4] discuss the powers of the Inam Commissioners and hold that the Commissioner had no authority to determine the rights of claimants, that his duties were not judicial, and that 'he was to deal with the Inams on certain terms varying with the holding while incidentally he was to determine but for the prescribed purpose only the nature of the title by which the person whom he found in possession, actually held it'. The nature of the Inam is not specified but later rulings of the Madras High Court have taken them to refer to personal Inams only. The certificate of the Inam Commissioner was held not to afford conclusive evidence to the title of the person to whom it was granted.

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1. 8 Mad. 249 F. B.
2. 26 Mad 339.
3. 2 M. H. C. R. 327
4. 2 M. H. C. R. 341

In Srinivasa Iyer V. Lakshmamma [1] and Bada V. Hussu Bhai [2] the enfranchisement was in the name of the then holder of the service Inam and a dismissed karnam in the former case and a member of the family in the latter case were nonsuited on the ground that the Government could sever the lands from the office and allow the office holder for the time being to enfranchise it.

The question whether members of the family of the last office holder can sue a stranger appointee in whose name the lands were enfranchised was referred to a Full Bench in Venkata V. Rama [3], where it was held (Hutchins J. dissenting) that the Civil Court cannot adjudicate upon such claims and that a person entitled to the office before enfranchisement could not sue the appointee after enfranchisement. Turner J. held that 'Service Inams were not family property but merely an appanage to the office, inalienable and designed to be the emoluments of the officer into whose hands so ever the office might pass'. The enjoyment by the other family members was not legal but was only by sufferance on the part of the actual appointee. Hutchins J. who was one of the referring Judges raises some interesting objections to such a theory. He holds that a person capable of performing service and suing before the Collector for the office and emoluments can recover the Inam lands subsequent to enfranchisement. Sec. 3 of Act IV of 66

1. 7 Mad. 206 2. 7 Mad. 206 3. 8 Mad. 249 (F B)

clearly provides that the previous decisions of the Revenue Courts ought not to be called in question by the civil courts which provision the learned Judge interprets as having given the Civil Courts the right to adjudicate upon such claims. The Judge was also personally aware of cases where the Inam Commissioner referred the claimants to a Civil Court and the Collectors refused to exercise jurisdiction as Civil Courts were getting it. The opinion of the learned Judge no doubt appears to be plausible but ignores that enfranchisement has nothing to do with a claim to the Hereditary office and that it merely severs the Inam from the office. The enfranchisement might or might not be in the name of the then office holder and the Government has to provide for the functions of the office in another manner or abolish the office where the services are no longer necessary.

In Narayana V. Chengalamma[1] the enfranchisement of an unsettled Palayam held on service tenure was held not to create a new estate but merely to release the reversionary rights of the Crown; their Lordships hold that it is not clear whether the Government treated the Palayam as a service Inam or a personal one but observe that the legal effect of enfranchisement is the same for a service Inam as in the case of a personal Inam (page 8). The Full Bench in Venkata V. Rama was not referred to.

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1. 10 M. 1

The subsequent rulings in Venkatrayudu V. Venkatramayya [1], Subbayyar V. Ramaswami [2], Durgamma V. Virraju [3] followed the Full Bench decision in Venkata V. Rama as to the effect of the enfranchisement of a service Inam. In Selamma V. Lakshmana Reddi [4] a service Inam enfranchised in the name of the widow was assumed to be her Stridhanam Property.

The Inam grant in Tariya Gowdu V. Vonam Gowdu[5] was in favour of five persons all members of the same family, one of whom was the office holder at the time of enfranchisement. Such a grant on the part of the Government was not illegal and the five grantees got a valid title to the Inam in question. In Subraya V. Kamu[6] the widow enfranchisee was held to have an absolute estate and the case of Narayana V. Chengalamma was held to refer to a personal Inam.

The decision of Bhasyam Iyengar J. in Gunnaiyan V Kamakshi Iyer, strikes a dissenting note and discusses in detail the scope of enfranchisement of service and personal Inams. The enfranchisement of service and personal Inams was of the same nature and did not operate as a resumption from the family or the person entitled to the Hereditary office and regrant to the enfranchisee. The wording of the Inam title deed 'I

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1. 15 Mad 284
2. 20 Mad. 454
3. 21 Mad. 47
4. 21 Mad. 100
5. 22 Mad 204
6. 23 Mad. 47—9 M. L. J. 160
7. 26 Mad. 339

acknowledge your title to the Inam. The Inam is now confirmed to you in freehold' was held to indicate the same result.

It was only in cases of confiscation as in the Sivaganga case[1] and the Hunsapore case [2] or of resumption for arrears of Revenue as in the Nuzvid case [3] that the issue of a new sanad operates as a new grant. The cases of Ch. Venkanna V. Lakshmi Narayan Sastri [4] and Narayana V. Chengalamma [5] were quoted with approval and those in Venkatrayudu V. Venkatramayya [6] and in Durgamma V. Virraju [7] were dissented from.

In the case of Subba Naidu V. Nagayya [8] a suit brought by the alienee from a reversioner was dismissed on the ground that no title had been made out for the plaintiff and that the Government has got the reversionary interest reserved under the rules of the Inam Settlement when a personal Inam is enfranchised. The principle laid down in this short Judgment is not clear and the later ruling in Vangala Dikshitulu V. Gavaramma [9] observes that 'the case of Subba Naidu V. Nagayya if inconsistent with our view cannot be held to be of any binding authority'. It was held that the enfranchisement of a personal Inam does not effect the rights of parties entitled there to and that the reversioner was entitled to a declaration that a sale by a Hindu widow was not binding beyond her life-time.

1. 9 M, I. A. 543.
2. 12 M. I. A. 1.
3. 2 Mad. 128.
4. 2 M.H.C.R 327.
5. 10 Mad. 1
6. 15 Mad. 284.
7. 21 Mad. 47.
8. 25 Mad. 424.
9. 28 Mad. 13.

In view of these conflicting authorities, the matter came before the Full Bench in Pingala Lakshmipathi V. Bommireddipalli Chelamayya [1]. The learned Judges interpreted the grant in favour of the widow and the reversioner as giving only a limited interest in the enfranchised property to the widow but as already observed, approved the observations of Bhashyam Iyengar J. in Gunnaiyan V. Kamakshi Iyer. The Judges further observed that it was not possible to deduce any general principle from the various judgments in the earlier Full Bench case of Venkata V. Rama [2]. The terms of Madras Act VIII of 1869 were interpreted to extend the principle applicable to title deeds issued prior to the Act to those issued subsequent to it. The provision relied on, was 'that nothing contained in Madras Act IV of 66 shall be deemed to confer on any Inam holder any right to land which he would not otherwise possess'.

The decision in Devaguptapu Satyanarayana V. G. Narasamma [3] laid down that mere Registration of a minor under Sec. 13 of Act II of 1894 did not give him any right to object to the enfranchisement of the lands in favour of an actual heir of the last office holder. The suit was by a minor grandson to cancel a patta issued in the name of the daughter of the last office holder and to enfranchise the lands in his name. The Judges observed that 'the plaintiff if appointed to the office before lands were enfranchised, might have a foundation for his claim

1. 30 M. 434 2. 8 Mad 249 3. 31 Mad 526.

to the lands'. This observation which followed the view expressed in the Full Bench Venkata V. Rama will be discussed later. Refer Jurisdiction of Civil Courts and enfranchisement.)

In Subraya Chetty V. Aiyaswami Iyer[1], the same principle as was laid down in 26 Mad & 30 Mad. F B, was reasserted, that the enfranchisement in favour of a widow only gave a limited interest to her. The decision in Lakshmana Naidu V. Geddanna [2] declared that enfranchisement was a confirmation of the existing title and that the right of the plaintiff declared by the Regulation suit was uneffected by enfranchisement proceedings. The same was the ratio decidendi accepted in Karri Ramayya V. Villoori Jagannadham [3] by Spencer and Coutts Trotter JJ. who held that enfranchisement did not destroy the rights of the joint family which had a hereditary interest in the Inam. Sec. 10 cl. (2) of (Act II of 1894) The Madras Proprietary Estates Village Services Act which lays down the rules of succession was held not to effect the family title to the lands.

The question arose in Secretary of State V. Srinivas-achari [4] with reference to the power of the Government to levy a royalty or seignorage fee on stones quarried in an enfranchised village; the decision of Sadasiva Iyer J. following 26 Mad. and holding that the Inam Settlement has the same effect as a permanent settlement i. e. the

1. 32 Mad. 86
2. I. L. W 329
3. 39 Mad. 930-1915 M.W.N. 838
4. 40 Mad. 268.

effect of changing a precarious tenure into permanent property and a varying assessment into a fixed demand, was approved in the Letters Patent Appeal (Seshagiri Iyer J. refers to the judgment in 26 Mad. as a Historical Judgment).

In Pyrappa V. Syamarao [1], it was held that on enfranchisement the property vested in the members of the family who lived jointly with the last holder of the office but that the divided members got no right. The family was held to have a contingent right until enfranchisement and the observations in the unreported appeal No. 176 of 1917 were quoted with approval.

The matter then came up before the Privy Council in Musti Venkata Jagannadha Sarma V. Musti Veera-Bhadrayya [2] which reasserted the distinction between Service and Personal Inams and declared the law as propounded by 26 Mad. 339 & 30 Mad. 434 (F. B) as erroneous. The principle so enunciated has been followed in Venkatramadas V. Gavarraju [3], Gourikantam V. Ramamurti [4] Krishna Sastri V. Singaravelu [5], and Guntupalli Ramakrishnayya V. Pitchayya [6]. In the last mentioned case the contention that enfranchisement would enure to the benefit of the then office holder was negatived and even a stranger was held to get a good title as against the office holder.

1. 1918 M.W. N 849-8 L. W. 614.
2. 44 M. 643-1921 M. W. N. 901-41 M. L. J. 1 P. C.
3. 1922 M.W. N. 305-16 L. W. 228 4. 46 M. L. J. 482
5. 48 M. L. J. 470 6. 48 M. L. J 500.

But the P. C.case was attempted to be distinguished and interpreted in T. Lakshmi Narasimham V. T. Venkataratnayamma [1] by Spencer and Ramesam. JJ. It was pointed out that the Inam title deed did not create a title where no title existed before. To hold contra was to ignore the provisions of Act VIII of 69. Ramesam J. further held that it is open to an aggrieved party to show that the names in the Inam title deed were inserted by mistake, and that in the P. C. case there was no conflict between the officeholder and a person claiming the property on the ground that he was named in the title deed. This decision has been consistently dissented from in the later rulings of the Madras High Court. The provision in Act VIII of 69 was held to have been intended for the protection of Kudivaramdars where Melvaram was granted (Refer observations in Krishna Sastri V. Singaravelu, The resumption and regrant theory in the case of service Inams has received support in the later decisions of Karnam Venkata Subbarao V. Adinarayana Rao [2] Ramanna V. Venkata Narayana [3], and Palaniyandi V. Veliamuthupillai [4].

The Inam Commissioner and his Powers.

The scope of the enfranchisement proceedings amounting to a resumption and a regrant in the case of service grants has been considered above. This leads us to the question as to the powers under which the Inam

1. 30 M. L. T. 334-70 I. C. 642. 2. 50 M. L. J 46-22 L. W. 631
3. 52 M. L. J. 52. 4. 55 M. L. J. 579-28 L. W. 530.

Commission conducted the enfranchisement proceedings. The Inam Commissioner is the agent of the Government in conducting these proceedings (Sobhanadri Apparao V. Gopala Kristnamma [1] and The Secretary of State for India in Council V. Kasturi Reddi [2]). His duties were not judicial. He was to deal with the Inams on certain terms varying with the holding while incidentally he was to determine the title by which the person actually in possession held it. He had to determine the class of Inams to which the holding belonged and the application to such Inams of the terms on which the reversionary right of the Government was to be surrendered. (Vissappa V. Ramajogi [3]). He had no authority to determine the rights of rival claimants (Ch. Venkanna V. M. L. N. Sastrulu [4]). The presumption is that he did not transgress any of the rules framed by the Government for his guidance. In Sri Rajagopalaswami V. Jagannadha [5], it was held that 'the relations between the Melvaramdar and the Kudivaramdar were governed by the law applicable to landlord and tenant and it was not the intention of the Inam authorities nor was it within the scope of their duties, to define those relations'. Nor is it within his jurisdiction to enter into any agreement with the Zemindar e. g. the fixing of the Jodi etc. so as to bind the successors of the Zemindar or the

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1. 16 Mad. 34. 2. 26 Mad. 268 at 278 3. 2 M.H.C.R. 341
4. 2 M. H. C. R. 327 also 32; M. 456. 5. 38 M. 155.

Inamdars affected thereby [1]. In Secretary of State V. Srinivasachari [2] Sadasiva Iyer J. thus defines the powers of the Inam Commissioner— 'The Inam Commissioner was the officer fully empowered to go into the title deeds and into the previous history of the enjoyment of the Inam lands and to recognise on behalf of the Government whatever rights are in his opinion proved to exist in the Inamdars. His recognition of the title of the Inamdar as the title stood before the enfranchisement and also his power to bargain with the Inamdar on behalf of the Government so as to make the Inamdar consent to the enfranchisement on certain terms were not restricted and his decisions within the scope of the large authority were clearly binding upon the Government'. The decision of Sadasiva Iyer J. was upheld in the Letters Patent Appeal that followed and Seshagiri Iyer J. while following the observations of Bhasyam Iyengar J. in Gunnaiyan V. Kamakshi Iyer [3]. observed that 'Any declaration or finding of the Inam Commissioner regarding the nature and extent of the grant would bind the Government' [2].

The powers of the Inam Commissioner are thus very wide irrespective of the Non-Judicial nature of his enquiry and that even an enfranchisement of a service grant by him in the name of a stranger confers an

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1. Refer 16 M. 34.
2. 40 M. 268
3. 26 M. 339

absolute title upon the grantee. It has to be seen whether the powers so exercised are subject to judicial determination in the Civil Courts.

Enfranchisement and Civil Courts.

Where personal Inams are enfranchised in the name of any person, he becomes full owner thereof subject to the rights of the other members of his family. But where lands attached to a service are enfranchised in the name of a stranger, the latter takes it as an absolute grant and the persons in possession, the members of the family who had a right to sue for the office and the actual officeholder are thus superseded. The Resumption and Regrant theory negatives the rights of such persons to question the validity of the enfranchisement proceedings. In Venkata V. Rama[1], apart from the observations of Hutchins J. in his dissenting judgment, Turner J. observes that 'If he had been appointed to the office before the lands were enfranchised he might have had a foundation for his claims to the lands in suit. If he had shown that at the time of the enfranchisement he had been appointed to the office, the Court would have had jurisdiction to determine whether the enfranchisement in favour of the appellant can be supported, (at P. 2€3). Observations to the same effect are found in the Judgment of Muthuswami Iyer. J. in the later ruling of Devaguptapu Satyanarayana V. G. Narasamma[2]; it was held following the Full Bench that

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1. 8 Mad. 249. 2. 31 Mad. 526.

the plaintiff if he had been appointed to the office before the lands were enfranchised, might have a foundation for his claim to the lands.

This is a point not alluded to in the judgment of the Privy Council but in the later ruling of Krishna Sastri V. Singaravelu Ayling J. observes 'I think what the learned Judges meant was that if plaintiff had been in office at the time of the enfranchisement, it would have been open to the Court to consider whether the enfranchisement in favour of the defendant was legal or ultravires. This may be so'.

The scope of the decisions beginning from the decision in Mushti's case is that even a stranger gets an indefeasible title to an enfranchised service Inam land and this is in strict accordance to the regrant theory. The Courts cannot therefore go into the validity of the enfranchisement proceedings except in cases where the Government abolishes the office altogether thus creating a right in the then office holder or a claimant to the office to contest that the proceedings of the Government are ultravires.

But it seems desirable that where the office itself is abolished or otherwise provided for, the office holder or the members of his family should have an option of holding the lands on enfranchisement at the full assessment rate. It is also desirable that the alienations by way of gift, mortgage or sale by the office holder should be held to prevail against him after enfranchisement in his name,

though such alienations might be void as against the Government prior to enfranchisement. The law as it stands is against this view.

Enfranchisement and Adverse possession.

The effect of adverse possession differs according as the Inam enfranchised is a service or a personal one. In the latter case, the enfranchisement merely confirms the existing title and the ordinary rule of limitation laid down in Arts 142 & 144 applies But in the case of a service Inam, the enfranchisement is a clear and unequivocal resumption of the land by the Government and a regrant to whomsoever it pleases and no title by adverse possession can be claimed as against the enfranchisee unless the Government's right to resume was extinguished at the time of enfranchisement. (Refer Gourikantam V. Ramamurti[1], Krishnasastri V. Singaravelu [2], and Maniappa Udayan V. Sabhapathi Asari [3]).

But the law has not been uniform. In Dinavahi Lakshmipathi V. Pingali Narasimham[4], it was held that a trespasser prior to enfranchisement gets a right by prescription under Sec 31 of the Limitation Act as an Inam grant for service was the hereditary property of the grantee and the conditions restraining alienation applied only as between him and the Crown. The

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1. 46 M. L. J. 482.
2. 48 M. L. J. 470.
3. 53 M. L. J. 515.
4. 3 L. W. 590.

decision in Gunnaiyan V. Kamakshi Iyer[1] was followed. This can no longer be the law since the decision of the Privy Council in Mushti Jagannadha V. Virabhadra[2].

In 48 M. L. J Short Notes P. 105, Ramesam J. declared that the ordinary period of limitation applied irrespective of considerations under Art 149 of the Limitation Act. As this was conflicting with the decision of Wallace J. in Gourikantam V. Ramamurti[3], the matter was referred to a bench, and Ramesam & Phillips JJ. reiterated that the ordinary rule applied and that the enfranchisement did not nullify the defendant's possession prior to it (Refer Ayyagari Venkata Suryanarayana V. Makka Venku Naidu[5]). This was followed by Jackson J in S. A. 260 of 23 decided on 30-7-25. The ratio decidendi of the latter set of decisions seems to be that Art 149 of the Limitation Act applies only as between the Government and the person claiming adverse possession but not in suits filed by a pattadar or transferee from the Government. (Refer The Municipal Commissioners of Madras V. Sarangapani[6], Maharajah Jagadindra V. Rani Hemanta Kumari[7], P. Sankaran V. Vitti Thalakat[7] and later cases). The law so laid down is anamolous. Where adverse possession commenced only against a pattadar, grantee or other transferee from the Government after such grant or transfer the ordinary

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1. 26 Mad. 339.
2. 41 M. L. J. 1—44 Mad. 643 P. C.
3. 46 M. L. J. 482.
4. 97 I. C. 253.
5. 19 Mad 154.
6. 32 Cal. 129—31 I. A. 203 P. C.
7. 28 Mad. 505.

period of twelve years would apply to the case. But where the adverse possession commenced as against the Government, it seems equitable to hold that the total period whether against the Government or its representative in interest should not exceed the statutory limit of sixty years. The real question would thus be whether the Government had any power of disposition at the time of enfranchisement, as was held in Krishna Sastri V. Singaravelu [1].

Again, though a mortgage of enfranchised service Inam land is void, still a mortgagee with possession is entitled to claim prescriptive right to a mortgagee's interest (Refer Gopaladasu V. Rami [2] ; 49 M. L. J. Short Notes 66). In the latter case the possession prior to enfranchisement was tacked on to that subsequent to it so as to make up the prescriptive period in favour of the mortgagee.

Effect of resumption and enfranchisement on occupancy rights.

The question whether resumption and enfranchisement put an end to the occupancy rights acquired in the lands resumed or enfranchised depends upon the nature of the Inam grant. Where the grant consisted of the melvaram alone, the right of the Government is confined to imposing full assessment The Government cannot resume what they had never granted when the Inam was created.

1. 48 M. L. J. 470.
2. 44 Mad. 946-41 M. L. J. 194.

But the real difficulty arises where the grants consisted of both the warams and the Government exercise their right of resumption or enfranchisement. In Gangabai V. Kalapadari [1], it was held that when an Inam was resumed the Inamdar's right to exemption from assessment ceased but all his other rights were not affected. If the Inamdar was entitled to eject the defendant prior to resumption, the right was held to subsist after resumption also. The decision was clearly based on the presumption that the Inam grant was merely one of melvaram, which has since been disapproved by the Privy Council in a series of decisions. There is no presumption either way and the Inamdar has to make out his right to eject in every case. Resumption or enfranchisement proceedings behind the back of the cultivating tenant do not bind him and the enfranchisee has to show that the grant was of both the warams. (Refer 52 M. L. J Short Notes 52; 53 M. L. J. Short Notes 36). But it is doubtful whether the occupancy rights acquired by a tenant by prescription would be put an end to on resumption or enfranchisement of a grant consisting of both the Warams. In two early cases, Cheekati Zemindar V. Ranasooru Dora [2] and Venkata Narasimha Naidu V. Dandamudi Kotayya [3] it was held that the tenants in Zemindaries had inherent occupancy rights and that they do not claim through the Zemindar who was only entitled to the melvaram. These decisions

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1. 9 Bom. 419. 2. 23 Mad. 318. 3. 20 Mad. 299.

were the basis of the decision in Gajapathi Maharaja V. Sonti Prahlada[1] where the Zemindar on resumption was held to be entitled to impose only full assessment and not eject the office holder from the land. Their Lordships observe that 'There is no reason why the office holder should be placed in a worse position in the way of performance of tenure than any other tenant' and that the usual presumption of occupancy rights must be raised in his favour. The decision was followed in Chowdanna V. Venkatapathi Nayanim Garu[2].

In Swaminatha Mudali V. Saravana Mudali[3], there was a lease for 99 years in favour of the Mirasidars and it was held that the Government was not bound by the assertion of occupancy rights by the lessees from the grantee. In Subramania Iyer V. Onnappa Koundan[4], the effect of resumption on occupancy rights directly arose for decision before Sadasiva Iyer and Spencer JJ. The latter held that the tenants had not proved occupancy rights by grant, contract or prescription while the former observed that even assuming that the tenants did acquire such rights, the grant of a ryotwari patta by the Government on resumption put an end to the subordinate titles under the Inamdar. In Venkatappacharyulu V. Bapireddi[5], it was held that the rights of the ryots were not in any way affected and that they could not be ejected on the strength of a ryotwari patta from

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1. 1914 M.W.N. 179.
2. 50 M. L. J. 429.
3. 33 M. L. J. 370.
4. 12 L. W. 576.
5. 13 L. W. 203.

the Government. On the facts, it was observed that the Government never purported to resume the rights of the tenants. Act VIII of 1869 was also interpreted to have laid down the policy of the Government that the grant of an Inam patta would not affect the rights of tenants or third parties. The broad proposition of Sadasiva Iyer J. was dissented from but the learned Judges conceded that there might be some cases where prescriptive rights would be put an end to by resumption i. e. where the grant was for a fixed period or for a specified life or lives.

In the recent case of Sampathu Rao V. Appaswami[1] Anantakrishna Iyer J. broadly lays down that the Government could deal with the occupancy rights also and grant the occupancy rights to whomsoever it liked on resumption of a grant consisting of both the Warams. The law as discussed above is by no means clear but it seems reasonable to hold that occupancy rights acquired by prescription for over a period of sixty years should be made to prevail against the enfranchisee or the Government. The Madras Estates Land Act has however made it clear that occupancy rights cannot be acquired in service Inams under Sec. 6 of the Act but leaves prescriptive rights untouched.

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1. 1930 M.W.N. 385.

CHAPTER VI.

Occupancy Rights.

As has been observed by the P. C. in Nainapilli Markayar V. Ramanadham [1], 'A permanent right of occupancy in land in India is a right subject to certain conditions, of a tenant to hold the lands permanently which he occupies. It is a heritable right and in some places it may possibly be transferred to a stranger by the tenant.' The English law of landlord and tenant based on the feudal relation has no application to India and the subject of occupancy rights has te be studied with reference to the lex loci and the Hindu conception of sovereignty and rights in the soil. It has been already adverted to in Ch. I that the law as it now stands recognises the sovereign's right in the soil whether cultivated or waste and the Privy Council ruling in Suryanarayana V. Pothanna [2] declares it in unmistakeable terms.

Two rights in the land have been recognised from times immemorial one that of the Sovereign and the other of the cultivator or tenant. The Sovereign's right to a share in the produce or to a money payment has been called the Melvaram and the tenant's interest is

1. 46 M. L. J. 546 P.C. 2. 41 Mad. 1012.

called Kudivaram. The terms Melvaram and Kudivaram are peculiar to Southern India. Though originally intended to denote a share in the produce, the expression Kudivaram has been gradually used to denote a right of permanent occupancy of the tenant in the land (Vide observations at Page 550 & 551 in the P. C. case Nainapalli V. Ramanadham quoted above) Such permanence is not a universal incident in a ryot's holding. If claimed, it must be established.

The legislature has recognised the occupancy rights of tenants in certain holdings. The provisions of the Madras Estates Land Act, the Bengal Tenancy Act and similar enactments have declared such rights from time to time. In declaring such rights the new Acts affiirmed the old customary law that had always been recognised by the British Administration (vide remaks in Chidambara Sannidhigal V. Veerama reddi. [1]) The preamble to the Madras Estates land Act (Act I of 08) declares that the Act was intended to declare and amend the law relating to the holding of land in Estates in the Presidency of Madras. Occupancy rights can thus be conferred by

(1) Custom.

(2) Prescription.

(3) Grant or contract.

(4) Acts of legislature.

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1. 1922 M. W. N. 749 P. C. at 757.

Occupancy rights by custom.

A customary right of the tenant to permanent occupancy has been recognised from eary times. The place of the cultivating ryot in the Agricultural Economy of Southern India is thus described in a Proceeding by the Board of Revenue dated 5-1-1818.

'The universally distinguishing character as well as the chief privilege of this class of people is their exclusive right to the hereditary possession and usufruct of the soil so long as they render certain portion of the produce of the land in kind or in money as Public Revenue; and whether rendered in service, in money or in kind and whether paid to Rajahs, Jagirdars, Zemindars, Poligars, Mootahdars, Shrotriemdars, Inamdars or Government officers such as Tahsildars, Amildars, Ameens or Tanadars, the payments which have always been paid by the raiyats are universally termed and considered the dues of the Government.'

The passage above quoted seems to recognise a customary right in the tenant to permanent occupancy in all kinds of lands. In Krishnaswami Pillai V. Varadaraja Aiyangar [1], the acquisition of customary occupancy rights has been discussed at Pages 355 & 356. It is unreasonable to expect uniformity in the customary law prevailing in various parts of India at the present

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.1 5 Mad. 345 F. B.

day. Local conditions have so tended to the recognition of two kinds of cultivators one resident and possessing occupancy rights and the other migratory. In Northern India, the possession necessary for establishing the right of a resident cultivator was 12 years in accordance with the general law of limitation. In Southern India, custom in order to create rights must be immemorial. The period has nowhere been fixed even by judicial decisions. A period of seventy years was accepted as sufficient in the above F. B. case Krishnaswami V. Varadaraja[1]. The Privy Council in Chidambara Sannidhigal V. Veeramareddi [2] and the Madras High Court in Veeranan V. Annaswami Ayer[3] pointed to a position of hundred years as sufficient to raise the presumption of a customary right.

The Zemindaries stand on a peculiar footing apart from the other holdings like Inams and Jagirs. It is reasonable to hold that the Zemindaries are usually of later origin than the tenants' holdings in the Zemindaries. It cannot be maintained for a single moment that the tenants' holdings were carved out of the Zemindaries. A clear discussion of this customary right in Zemindaries finds a place in the two leading cases Venkata Narasimha Naidu V. Kotayya [4] and Cheekati Zemindar V. Rana Sooru Dora [5].

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1. 5 Mad. 345 F. B.
2. 1922 M. W. N. 749—45 Mad. 586—43 M. L. J. 640.
3. 21 M. L. J. 845. 4. 20 Mad. 299. 5. 23 Mad. 318.

The important points laid down therein are :—

(1) That the rights of Raiyats in Zemindaries has no origin in express or implied grants from the Zemindar.

2) That the contrary is the case is borne out by the system of Agricultural landholding in the country.

(3) That the Sovereign or Zemindar was always entitled only to a share in the produce and had no rights in the soil (observations contra in Suryanarayana V. Pothanna P. C.) [1].

(4) That the English law of tenancy at will or from year to year has no place in India.

(5) That the holder of the Kudivaram interest far from being a tenant of the holder of the Melvaram right is a co-owner with him (observations contra in Periakaruppan V. Nayanar [2] Refer also Muthu Sri Jirjamba V. Secretary of State [3]).

(6) That there is no distinction between a ryot holding in a Zemindari and one holding lands in a Govt. village. Both are entitled to occupy the land so long as they pay their dues and can only be evicted by the processes provided by law. These observations were refered to with approval in the case of Cheekati Zemindar V. Ranasooru Dora [4]. These two cases having discussed the position of Raiyats in Zemindaries gave rise to the

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1. 41 M. 1012 P. C.
2. 1929 Mad. 617.
3. 23 M. L. J. 687—1913 M. W. N. 255.
4. 23 Mad. 318.

presumption that the Raiyats of holdings in Zemindaries were prima facie entitled to occupancy rights and the burden was laid on the Zemindar to prove his right to eject. The customary right in Zemindaries of tenant's occupancy rights is now set at rest by the legislature and the Madras Estates Land Act recognises the occupancy rights of tenants in permanently settled Estates. The above principle laid down with reference to Zemindaries was extended to the case of Inams also in later cases (except in Marapu Tharalu V. T. Nilakantha Behara [1] and I. China Nayadu V. Venkata Subbayya [2]). The Privy Council in Suryanarayana V. Potanna [3] has dissented from the above observations and laid down that there is no presumption either way and that each case has to be decided on its own facts. The question of presumptions and Burden of Proof will be dealt with later. In Muthu Goundan V. Perumal Iyer [4] Ramesam J. observes that if the Madras Estates Land Act was not passed, the decisions in Venkata Narasimha Naidu V. Kotayya and Cheekati Zemindar V. Ranasooru Dora would have been shaken by the recent P. C. decision (P. 271). It is submitted the view is not correct. The Privy Council in Suryanarayana V. Potanna and later cases was only dealing with the Burden of proof and presumptions under the Act and not with the rights acquired by tenants in Zemindaries by immemorial custom.

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1. 30 M. 502.
2. 1910 M. W. N. 639.
3. 41 M. 1012.
4. 1921 M. W. N. 263 F. B.

Such customary rights are the subject of legal recognition in courts and stand on an entirely different footing from rights created by statutory provisions.

Rights by Prescription.

Closely allied is the acquisition of rights by Prescription. In order that a person in possession of land should acquire rights by Prescription, he should establish that he had been in possession of the same plot to the knowledge of the landlord for a long time, that the rent has been uniform, that neither he nor his predecessors were ever disturbed in their peaceful enjoyment and that they exercised all the rights appurtenant to ownership of occupancy rights

The sale or mortgage of holdings, the partition between members of the family, the succession of holdings from father to son or husband to wife, the recognition of transferees by the landlord, the affecting of such improvements as sinking of wells, the receiving of of compensation money from the Government under the Land Acquisition Act are some of the incidents that establish the right to prescription. Mere long possession is not enough in the absence of such incidents. The various circumstances which go to establish occupancy rights will be dealt with in detail in the chapter laying down the tests to determine the occupancy rights in any holding.

Where the relation of landlord and tenant is established, the acquisition by prescription is put an end to. The tenant would be estopped so long as such relationship continues, to claim occupancy rights, contrary to the rights acquired by contract. Refer Nainapillai V. Ramanadhan P. C. [1]

Acquisition by grant or Contract.

Occupancy rights can also be acquired by grant or under a contract with the land lord. The grant should be from one who was entitled to part with the kudivaram rights in the soil. The grantor might be a person claiming himself under a grant from the Zemindar or other paramount owner and he cannot part with greater rights than what he has got. On this principle, the tenants' occupancy rights were upheld in the latest Privy Council case Seetayya V. Subrahmania Somayajulu [2] where the grantors being Deshpandyas were held entitled only to the melvaram rights in the soil. Refer also M. Yerrayya V. Y. Kangallu Naidu [3].

(a) The ryots under the Madras Estates Land Act called nonoccupancy ryots can under certain circumstances acquire occupancy rights (See 46 et seq.)

(b) Reference may be made to Darkhast grants i.e. grants by the Government of waste lands and of lands relinquished or abandoned to Government. Rules with reference to the same are contained in Boards'

1. 46 M. L. J. 546 P. C.
2. 56 M. L. J. 730—1929 Mad. 115 P C.
3. 34 Mad. 246

Standing order No. 12. The lands granted on Darkhast are subject to the same incidents as lands held on ryotwari tenure.

(c) Under the Ryotwari Tenure, the ryots obtained a permanent occupancy right in their holdings subject to the revision of assessment at the end of the fixed periods of 20, 30 or 40 years as per the settlement rules. Prior to 1865, the Government tracts were administered under the Asara or Visabadi Systems. The Asara system consisted in the Government estimating or actually measuring the actual crop upon the land and receiving the value in money of the Government's share of the produce. It was otherwise known as the Sharing system. The Visabadi system consisted in the fixing of a total rental for each village and the distribution of the same over the different holdings of the village. The fairness of the distribution was kept up by the challenging system under which a ryot who was aggrieved with the assessment on his own land could offer a higher rent for his neighour's holding thus compelling his neighbour to accept the higher bid or exchange his holding with the challenger. The system was known as the Vantuvaradi in the Zemindari tracts. These Systems have been dealt with in the Godaveri District Gazeteer at Pages 167 & 168. Seperate systems were prevalent in the other districts of the Presidency but the ryotwari Settlement has now superseded them and has given the ryot permanent occupancy rights in his holding.

The pattadar has occupancy rights in the soil but the Patta that is granted to him is not in the nature of a grant or conveyance but only a bill showing the assessment upon the land. Any undertenant of the Pattadar cannot claim occupancy rights. Permanence is not a universal or integral incident of his holding. He has to establish such rights by proof of contract, custom or title. Vide observations in Subramania V. Subramania [1] P. C. Aiyanars V. Periakaruppan [2] and Seturatnam Iyer V. Venkatachela Goundan [3].

(d) Agency tracts :—Where Agency tracts could be brought under the scope of the Estates Land Act, the tenants acquired occupancy rights under the Act. Sec. 1 of the Act does not exclude the Agency from the operation of the Act. But in waste lands and forest lands belonging to the Government, there was practically no cultivation till recently. Even where it was prevalent, the shifting cultivation was practised. The villages were rented out from year to year to the highest bidder. Recent attempts are being made to introduce Survey and Settlement in these tracts just as in the Ryotwari tracts and where such settlements have been made, the ryots are acquiring occupancy rights in their holdings.

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1. 57 M. L. J. 1 P. C.
2. 1929 Mad. 617.
3. 43 M. 567—38 M. L. J. 476 P. C.

CHAPTER VII.

Occupancy rights by act of Legislature.

So far as the Madras Presidency is concerned, the Madras Estates Land Act defines the conditions under which occupancy rights can be acquired by operation of law.

Sec. 6 (1) of the Act provides that every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land not being old waste situated in the Estate of such landholder shall have a permanent right of occupancy in the holding.

The ryot in order to obtain occupancy rights under this provision must have been in possession of ryoti land or admitted to possession by a landholder. The land should be situated in an Estate and must be ryoti land not being old Waste. The definitions of Ryoti land and old Waste are given in Sec. 3 cl. (16) & cl. (7).

All land in an estate excluding (a) Private land (b) tankbeds (c) threshing floors, cattle stands etc. and (d) lands granted on service tenure is ryoti. Ryoti land includes oldwaste as defined in Sec. 3 (7) and is cultivable land.

Sec 6 (1) thus does not confer occupancy rights in Private land, tankbeds, threshing floors etc., and lands

held on service tenure. Nor does it confer occupancy rights in old waste except where they were acquired before the commencement of the Act (Sec. 6 cl. i.) or where under contract they were conferred by the land holder.

The next essential circumstance is that the ryoti land excluding old waste should be situated in an Estate.

An Estate is defined in Sec. 3 (2) and means

(a) Any permanently settled Estate or temporarily settled Zemindari.

(b) Any portion of a permanently settled Estate or temporarily settled Zemindari which is seperately registered in the office of the Collector.

(c) Any unsettled palayam or Jagir.

(d) Any village of which the land revenue alone has been granted in Inam to a person not owning the Kudivaram thereof provided that the grant has been made, confirmed or recognised by the British Government or any separated part of such village.

(e) Any portion consisting of one or more villages of any of the Estates specified above in clauses a, b & c which is held on a permanent under tenure.

Where ryoti land does not fall under any of the clauses above mentioned, the act does not apply and occupancy rights are not conferred under the statute. It is proposed to deal with these clauses seriatim.

Clauses (a) & (b) refer to permanently settled Estates or temporarily settled Zemindaries and portions of the same seperately registered in the Collector's office under Regulation I of 1876.

Clause (c). refers to an unsettled palayam or Jagir. Settled palayams and Jagirs come under cl. (a) as the expression Estate in cl. (a) is comprehensive enough to include the Palayam, Jagir, Mitta and Zemindari. The recent decisions Ramaswami V. Tirupathi [1] and Ramalinga Mudali V. Ramaswami Iyer [2] clearly lay down that the word unsettled qualifies both Palayam and Jagir in cl. (c).

In this connection it is necessary to know exactly what is signified by the words Palayam and Jagir.

Palayam:—Wilson in his glossary defines a Palayam as a tract of country subject to a petty chieftain or Polygar A Poligar is a petty chieftain occupying usually wild tracts and forests subject to pay tribute and service to the ruling power but seldom paying either and more or less independent but as having at present since the subjugation of the country by the East India Company developed into peaceful holders. Their status differs in no material particulars from that of the sanad-holding Zemindars.

Jagir:—Jagir is a Mahommedan term and has been referred to by Baden Powell in his Land Systems in

1. 52 M. L. J. 259. 2. 1929 Mad. 529—29 L. W. 760.

British India Vol. I at pages 189 & 257. In Ramaswami Kavundan V. Thirupathi Kavundan [1] the Jagir is described as a grant of landed property for life or for a definite number of lives in lieu of pension for services usually military, rendered to Government in order that the grantee may maintain a certain dignity and state. A Jagir as held by the Privy Council in Sakina Bai V. Fatima Begum [2] points to occupancy. The occupancy might refer to an office such as that of a Collector of revenue or an occupancy of land. A Jagir is in general a kind of Inam grant and the Inam Commissioner was authorised to deal with Jagirs. The word unsettled in the clause refers to both Palayams and Jagirs. The nature of a Jagir is completely discussed in Sam V. Ramalinga Mudaliar[3] and the recent decision Ramalinga Mudali V. Ramaswami Iyer [4]. From the definitions given in Wilson's Glossary and Maclean's Manual of Administration, a Jagir seems to be a grant of land revenue alone to enable the grantee to administer the general Government of the District. Saranjam is the Maratha equivalent for the term Jagir and the P. C. has repeatedly held that there is no presumption that a Saranjam grant was only of land revenue and that each case must be viewed in the light of the facts therein.

Sec. 3 (2) cl. (e) refers to portions consisting of one or more villages of any of the Estates specified above in

1. 52 M. L. J. 259.
2. 1918 M. W. N. 384.
3. 40 Mad. 634—30 M. L. J. 600.
4. 1929 Mad. 529—29 L. W. 760.

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clauses a, b & c which are held on a permanent under tenure.

(a) In the first place, it has to be noted that the clause can apply to whole villages and not parts of a village. This clause is intended to cover permanent leases of villages in Estates coming under clauses a, b & c and also maintenance or service grants.

(b) Again, the grant of a village in Inam subsequent to the permanent settlement is one held under a permanent under-tenure and falls under this clause.

(c) cl. (d) provides that the grant should be made confirmed or recognised by the British Government. So Inam villages which have not been so made, confirmed or recognised by the British Government, may fall under this clause.

(d) Pre-Settlement Inams of whole villages might have been included in the assets at the time of the Permanent Settlement, or excluded or sometimes only the Jodi or Kattubadi thereon might have been included.

(1) If included in the assets at the time of the permanent settlement, it is an under-tenure under thsi clause if the village has not been enfranchised or otherwise recognised by the Inam Commissioner. Refer Narayanaswami Naidu V. Sitayya [1].

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1 15 I. C. 784.

(2) If excluded as Lakhiraj, it does not fall under this clause.

(3) If only the Jodi or Quitrent or Kattabadi was included in the assets, then the Inam Commissioner though he cannot interfere with the Jodi or Quitrent so fixed, can enfranchise it and if not so enfranchised it is still part of the Estate and falls under this clause. Refer Sobhanadri Apparao V. Gopala Krishnamma [1] and T. Buchi Veerabhadrayya V. Sonti Venkanna [2].

(e) Another point with reference to this subclause is the absence of the words 'or any separated part of such village' as in cl. (d). Even if the under-tenures are subdivided by partition or alienation, still the entire village is an Estate under this subclause.

Sec. 3 (2) cl. (d) refers to a village of which the land revenue alone has been granted in Inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed or recognised by the British Government or any separated part of such village.

This is the important clause in sec. 3 and has been the subject of much comment and interpretation. Three conditions are necessary that an inam grant of a whole village should fall under cl. (d).

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1. 16 Mad. 34. 2. 24 M. L. J. 659.

(1) The grant must be of the land revenue alone ie. of the melvaram. If the grant comprised both the warams, the grant cannot fall under this sub clause.

(2) It must be to a person not owning the kudivaram thereof. If the grantee possessed the kudivaram at the time of the grant and if the melvaram alone was subsequently granted to him, still the grant would not fall under this sub clause. The words 'to a person not owning the kudivaram thereof' refer to the time when the Inam was granted. Refer Subbayya V. Sreenivasarao[1].

(3) The grant must have been made, confirmed or recognised by the British Government. The words 'made, confirmed or recognised' are significant. The question of recognition arises in the absence of confirmation by the grant of an Inam title deed by the Inam Commissioner.

The clause then proceeds to mention the separated parts of such villages. The object of the legislature was clearly to exclude minor Inams from the operation of this clause. But where a part of such village has been by inheritance, partition, alienation or otherwise seperated from the rest, there is no reason why the definition of an Estate should not apply to such cases.

Having considered the Scope of sec. 3 (2) cl. (d) in general, the nature of the Inam grants referred to

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1. 49 M. L. J. 126.

have to be considered. All service grants in Inam which have not been enfranchised by the Commissioner would be beyond the scope of the Act as Sec. 3 (16) excludes them expressly from the category of ryoti land. Whether the grant consists of the melvaram and Kudi-varam, or of the melvaram only depends on the facts of each case.

The best evidence to determine the same is the grant itself and where the grant is forthcoming the question depends upon the construction of the grant. But in the absence of the grant itself or where the grant is not conclusive, various circumstances have to be looked at to determine the nature of the grant. No doubt as the Privy Council very often held, each case depends on its own facts but a survey of the case law upto the present day would furnish us with various tests laid down for such determination. Some of these considerations also apply in dealing with occupancy rights acquired by custom and prescription apart from the provisions of the Act.

Nature of the grant and tests laid down by Judicial decisions.

(1) In the absence of the original grant, the entries in the Inam Register may well be referred to as evidencing the history of the property in question and the terms on which it is held. Vide observations in

Sethuramaswami V. Meruswami [1] and Dost Muhamed khan V. Sayyad [2]. But where the grant is available, the court must be guided by its terms alone (Jaggarao V. Gonhar Bibi) [3].

The word *Bhudanam or Bhumidanam* can mean either the grant of land or of the revenue assessed upon it (Refer Wilson's Glossary). It can only indicate the interest that the grantor had in the subjectmatter of the grant or was capable of granting at the time of the grant. Refer Subramania Somayajulu V. Seethayya[4] where it was held that no inference can be drawn from the use of such a word.

Nor is the use of the word *land* in the Inam Register and title deed of much significance. The following observations of Justice Venkatasubbarao in Chidambara V. Sivagnana [5] is relevant for our purpose. The words Inam and land are used indifferently and in the context, no significance attaches to the use of the particular word 'Land'. The tenants are not parties to the document and there was no occasion to refer to the rights of an inamdar as distinguished from those of the tenant. This decision has been approved in Zemindar of Parlakimidi V. Ramayya[6].

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1. 41 Mad. 96—7 L. W. 22.
2. 1927 Mad. 599 at 601.
3. 17 L. W. 521—1923 M. W. N. 347.
4. 1922 M. W. N. 614 at 619 and 620.
5. 47 M. L. J. 598.
6. 51 M. L. J. 510.

But apart from the use of the word 'land', the mention of tenants with permanent rights of occupancy in the Inam Register would be an indication of the Melvaram nature of the grant.

(2) The description of the village as Mouje in in the earliest documents relating to the grant. Wilson's glossary defines the word in two places.

(a) An Arabic word—literally means defined. Hence a defined place, a village and an inhabited village.

(b) Mauja–a village—one or more clusters of inhabitants and all the lands belonging to their proprietary inhabitants. Maclean in his Manual of Administration Vol III P 522 says that mouja means a village understanding by that term one or more clusters of inhabitants and all the lands belonging to their proprietary inhabitants. The word has been referred to in Venkata Sastrulu V. Sitaramudu[1]. It was held to mean a village in which there were peasant proprietors owning cultivable lands even then. The decision came up before the Privy Council [2] and during the course of the judgment their Lordships observe that it is not safe to build on the use of such expressions in 1783 and 1802, an inference as to the existence of tenants having permanent rights of occupancy in 1748. Their Lordships do not dissent from the observations of Sadasiva Iyer, as to the meaning of the word Mouje. The word if used at

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1. 38 Mad. 891—26 M. L. J. 555.
2. 43 Mad. 166 P. C.

the time of the grant would indicate the grant of the melvaram rights alone in the village.

In Subramanya Somayajulu V. Seethayya [1] the word was referred to and commented upon. It was held to mean literally a defined place, a village and an inhabited village. In Javvadi Surayya V. Tavvala Suryarao, Naidu,[2] the observations in the above case were cited with approval.

But the points was again adverted to by the Privy Council in Seethayya V. Subramania Somayajulu [3] (46 Mad. 92 taken on appeal)

Their Lordships again approve of the interpretation given by Sadasiva Iyer. J in 38 Mad. quoted above and dissent from the observations in 46 Mad. Their Lordships accept it as one of the many circumstances though not conclusive by itself and agree that the expression refers to a revenue producing village, some of the lands of which were already occupied.

In this connection reference may be made to another expression met with very often in ancient grants, Inam statements and other documents.

The expressions Sarva Agraharam, Sarva Inam etc. do not indicate the grant of both Melvaram and Kudivaram in the Soil. Mr. Ramadoss in his commentary on the Madras Estates Land Act refers to the error

1. 1922 M.W.N. 614—46 Mad. 92. 2. 45 M. L. J. 41.
3. 56 M. L. J. 730—1929 Mad. 115 P. C.

(P. 36-1915 Edn). The expression really means free of tax or revenue. Wilson points to the same meaning. The Madras High Court also in [1] has accepted the above interpretation. Refer also Venkatrama V. Secretary of State[2] where Sarva maniam was held to mean free tenure, exempt entirely from payment of revenue or rent.

(3) The use of the word Jeroyiti with respect to the tenants, and the holdings in the village, in leases, receipts and other documents is of some significance though not conclusive.

In Ravu Seshayya V. Secretary of State [3] the word Jeroyiti was held to be inconclusive and used in contradistinction to an Inam In Zemindar of Boddakimidy V. Budankayala Bhimayya [4] Curgenven J held that the word Jeroyiti Tenure is used only where occupancy rights exist. Wallace J. in Ivaturi Lingaiah V. Kandula Gangiah [5] observes that the words Visabadi and Jeroyitidar do not necessarily imply occupancy rights. But on the facts of the case, it appears that the suit muchilka referred to other lands which justified the use of the word Jeroyitidar.

In Dadamudi Tatayya V. K. Venkata Subbayya[6]. Devadoss J. called for a finding as to the use of the word Jeroyiti and Seri in Kristna District. One meaning of the word was held to be cultivation. The expression Jeroyiti

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1. 50 I. C. 360.
2. 1919 M. W. N. 191.
3. 31 I. C. 730—31 M. L. J. 214.
4. 1927 Mad. 76.
5. 1928 Mad. 58.
6. 1928 Mad. 786.

land might mean cultivated land or assessable land but when used with 'right' or 'Hakku' implies occupancy rights.

Considering all the above observations we have to conclude that the use of the word is inconclusive, but in some parts of the Madras Presidency, it is customary to use it to indicate permanent rights of occupancy.

(4) The status of the grantee is very often an important circumstance to find out whether both the varams were intended to pass by the original grant.

(a) The fact that the grantee was an absentee landlord, not resident in the village points to the conclusion that Melvaram alone was intended to be conveyed to him. The privy Council in Seethayya V. Subramanya Somayajulu [1] considered that a grant to a Brahmin resident two miles away from the village would make it more probable that it is in the nature of an endowment of Revenue rather than of land for the purpose of cultivation.

(b) A grant to a Brahmin was held to be of the Melvaram only in the early decisions of the Madras High Court. (Refer Venkata Sastrulu. V. Sitaramudu [2] and Nandigam Subbarayalu. V. Kannam Sahib [3]).

But the privy Council in Venkata Sastrulu. V. Sitaramudu has not approved of any such presumption[4].

1. 56 M. L. J. 730.
2. 38 M. 891—26 M. L. J. 555.
3. 1919 M. W. N. 836.
4. 43 Mad. 166 P. C.

The later decisions have followed the privy Council but the recent Privy Council case in Seethayya V. Subramania Somayajulu [1] considers it as one of the circumstances to determine the nature of the grant.

5 Where the grant is to a god or to some religious or charitable institution, the strong inference though not in the nature of a presumption is that a grant of the Melvaram alone was intended.

6. Another important matter to be considered is where the grantee was in possession of the land before the grant or at the time of the grant. There is no presumption that the grantee owned the kudivaram at the time of the grant. Refer observations in Peria Karuppan V. Naiyanar [2] Jagannatha V. Kutumbarayudu [3], and Venkata Sastrulu V. Sitaramudu [4].

7. Closely connected with the above is the mode of enjoyment of the village by the grantee. Where the grantee had never any direct dealings with the tenants, and where he had been dealing with them only through middle men or agents, the natural inference is that his position is more consistent with the grant of melvaram alone. Sometime as in Zemindar of Parlakimidi V. Yalla Ramayya [5], the village would be leased out on the mustajari system or the system of leasing out the village to a

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1. 56 M. L. J. 730 P. C.
2. 49 M. L. J. 602.
3. 39 M. 21.
4. 38 Mad. 891—26 M. L. J. 555.
5. 51 M. L. J. 510—1927 Mad. 10.

middleman who would be responsible for the rent of the whole village. In Godaveri & Kristna Districts, the system is called the ijara system. The middleman makes his own arrangements with the actual cultivators of the soil and the inference is strong that the ryots were in possession of the lands without the intervention of the Inamdar.

Their Lordships observe in Nandigam Subbarayudu V. Kannam Sahib [1] 'For a long time in the Northern Circars, Zemindars & Agraharamdars were in the habit of leasing out their right to receive rent from the tenants to middlemen. Such leases in the absence of positive evidence cannot be looked upon as a lease of the lands in the village.

Again a strong piece of evidence in favour of the grantee's occupation or cultivation at any time are the dumbalas to cultivate the lands or reap the produce granted by the grantor's family to the grantee or his representatives. In both the Privy Council cases Suryanarayana V. Pothanna[2] and Venkata Sastrulu V. Sitharamudu[3] such dumbalas were put in evidence and the courts came to the conclusion that they are only consistent with the grant of both the Varams in the soil.

8. The subject matter of the grant would give a clear indication of what was granted. If the land was waste at the time the tenant was admitted or when the grant was made, it would prevent the acquisition of occupancy

1. 1919 M.W.N. 836. 2. 41 Mad. 1012 P.C. 3. 43 Mad. 166 P.C.

rights· Refer observations in Cheekati Zemindar V. Rana soorudora.[1] Their Lordships Sundara Iyer and Sadasiva-Iyer JJ observe in Venkata Sastrulu V. Sitaramudu [2] 'When the entire lands themselves in the village as they were lying waste were granted in Inam, it cannot of course be said to be a grant of melvaram alone, (P 394.) In Yeditha Bhupatiraju V. Bhavaraju Venkataratnam [3] Odgers J observes obiter that where a grant was made out of the never cultivated waste lands, no melvaram right is granted and the kudivaram right alone must be deemed to have been granted. But this observation is not correct. The grant of a waste land must be construed to have been of both the warams. This view is confirmed by the Judgment of Devadoss J in Shama Goundan V. Tirupathi Goundan [4] where the grant comprised not only cultivated land but waste, poramboke Jamabandi, kattu maniam and Inam land. His Lordship also found that a good deal of waste land was brought under cultivation and held that land revenue alone could not be said to have been granted.

Where land revenue alone was granted, the grantee would have only the Melvaram rights in the waste-lands but he would be entitled to put tenants in possession of them not because he has any interest in the soil but because he can make the most out of them by way of Revenue.

1. 23 Mad. 318.
2. 38 Mad. 891—26 M. L. J. 555.
3. 1921 M.W.N. 821 at 826.
4. 48 M. L. J. 564.

(b) Forest land. With respect to such land, a natural presumption arises that both the warams vest in the Zemindar and as such in the grantee. The burden would be upon the ryots to show that they possessed the kudivaram rights in such lands. Refer Arunachela Ambalam V. Orr [1] This decision was referred to with approval in Chellamma V. Pentayya[2] by Krishnan J.

(c) In the case of House sites, the inference would be that the entire interest had been granted. The grant in P. Chengareddi V. S. L. Narasayya[3], was of a house site but the learned Judge also found that the grant comprised both the warams.

(d) When a Sarvamaniam grant of a Village included wet, dry, garden lands and also poramboke, the grantee was held not to have any rights in respect of poramboke lands like burial grounds, threshing floors etc. of which the Government was only a trustee for the community. The Government could not be deemed to have assigned over such property to individuals for their private use without a derogation from its trust.[4]

9. Enjoyment of the Village by the tenants or ryots claiming occupancy rights. Where tenants claim occupancy rights in any land apart from the Act, it must be shown that they have been enjoying the kudivaram right in the land as a matter of right and not under any

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1. 40 M. 722—32 M. L. J. 407.
2. 20 L. W. 478.
3. 20 L. W. 549.
4. 1919 M.W.N. 191.

contract with the landlord. Even in cases arising under the Act, these circumstances would raise a strong inference in favour of a tenant.

(a) Long possession by the tenant or his predecessors in title is one of the essential elements of such enjoyment. There is no time limit for such long possession but the trend of case law may point to possession beyond 60 years as being sufficient to establish long possession. But mere long possession does not give rise to a presumption of occupancy rights in the absence of other circumstances (Refer T. Mahalakshmi V. Ch. Lakshmi Narasimhamurti [1] and Chidambara V. Tiruvengada [2]).

But so long as the tenancy lasts, no tenant in India can acquire occupancy right by prescription against his landlord from whom he holds the lands. This has been held by the Privy Council in Madhava Rao V. Raghunath [3] & Nainapalli V. Ramanatham [4] (Refer also 46 M. L. J. S. N. 38.)

(b) Uniform rate of rent. Long possession for 80 yrs. with uniform rate of rent gave rise to tho inference of permanent rights of occupancy in Palaniyandi V. Vadamalai [5].

(c) The lands or Inams should descend to the heirs in succession. (Refer Chidambara V. Veerama Reddi [6]).

1. 1922 M. W. N. 146.
2. 7 M. L. J. 1.
3. 47 Bom. 798 P. C.
4. 46 M. L. J. 546 P. C. at 558.
5. 2 L. W. 723.
6. 1922 M. W. N. 749 P. C.

(d) The partition of holdings is a circumstance to probabilise occupancy rights though partition of non-occupancy holdings & service grants is not uncommon.

(e) Sales and mortgages of the holdings.

(f) The affecting of improvements in the holdings like the sinking of wells, erection of buildings etc.

(i, Whether Compensation money if any was received at any time by the tenants under the Land Acquisition Act.

(h) Where proof is available, the fact that the predecessors of the tenants were in possession at the time of the grant indicates clearly that there were occupancy rights in the holding. But Judicial decisions have also recognised that such proof is very difficult in the case of ancient grants. As has been observed by Phillips. J in Periakaruppan V. Aiyanars[1] it is difficult to prove that their predecessors were in possession at the date of the grant especially where the grant was prior to the British Rule.

(10) One important circumstance is the consideration of stipulations negativing occupancy right or agreeing to surrender the holdings at the end of a term, in the leases executed by tenants.

So far as occupancy rights under the Madras Estates land Act are concerned no tenant can contract out of his

1. 49 M. L. J. 602—1926 Mad. 136.

occupancy rights. Sec 187 (g) provides that nothing in any contract between a landholder and a ryot made before or after passing of the Act. shall entitle a landholder to eject a ryot otherwise than in accordance with the provisions of the Act. In Ramalinga Mudali V. Ramaswami Iyer[1], it was held that terms in the muchilkas do not negative the occupancy rights under the Act.

But where occupancy rights have been claimed apart from the Act, the conditions in the leases that there is no jeroyiti or occupancy right and that the land would be surrendered at the end of the term negative the occupancy rights in the land. In Chockaling Pillai V. Vythialinga[2] and Tyagaraja V. Gnana Sambhandha[3] where the lease originated in an instrument negativing occupancy rights, it was held that the land lord could eject the tenant. These cases were cited with approval in Mayandi V. Chokalinga Pillai [4] by the Privy Council

In Subbaraya sastri V. Krishnayya [5] a stipulation not to cultivate the land without obtaining a fresh cowle was held not to bar the acquisition of occupancy rights. The same was held in Gullapalli Bhadrayya V. P. Bapayya[6] Zemindar of Challapalli V Rajulapati Somaiah[7] and Viswanatharow V. China Kolandai Naiyanar [8] The contrary was held in Suryanarayana V. Somayya [9]

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1. 1929 Mad. 529 at 530
2. 6 M. H. C. R. 164
3. 11 M. 77
4. 27 Mad. 291
5. 9 I. C. 566—20 M. L. J. 526
6. 21 M. L. J. 803—11 I. C. 545
7. 27 M. L. J. 718
8. 22 I. C. 369
9. 16 M. L. J. 557.

With the Privy Council case of Suryanarayana V. Pothanna, a new change has come over the law.

Their Lordships while considering the nature of a grant under sec. 3 (2) cl. (d) of the Estates Land Act whether the melvaram alone or both the warams were granted, observe 'In the muchilkas, the tenants admitted that they held no Jeroyiti rights and agreed to quit the lands at the end of a term. All these muchilkas were made before the coming into force of Act I of 1908 and it has not been proved that when these tenancy agreements were entered into and the defendants or their predecessors in tittle were let into possession under them, any of the lands were or had been held by a ryot with a permanent right of occupancy.' This observation was followed in the later Privy Council case Venkatasastrulu V. Sitaramudu [1] In Javvadi Soorayya V. Tavvala Suryarao Naidu, [2] Spencer J. observes that the undertaking to quit the lands at the end of their term implies absence of occupancy rights. In Koppireddi Nookayya V. Mandalika Bhimanna, [3] Ramesam J. after holding that the suit land was not an estate under sec. 3 (2) cl. (d) considered the effect of the terms in the leases and observed that the term to quit would be an important condition in all cases not governed by the Estates Land Act.

The later case of Annamdevula Tata V. Khwaja Ahmedulla Khan [4] was one relating to ryotwari tracts.

1. 43 M. 166 P. C.
2. 45 M. L. J. 41.
3. 45 M. L. J. 91.
4. 48 M. L. J. 701.

The learned Judges after quoting the relevant portions from the P. C. cases above referred to observe that Chockalingam Pillai's case is still good law except when abrogated by legislature (Act I of 1908) as to lands in Estates.

But one word of caution in respect to such leases which stipulate the absence of occupancy rights is that very little weight should be attached to leases subsequent to Chokalingam Pillays' case (6 M. H. C. R. 164.) In that case, a landlord was entitled to eject a tenant at the end of the stipulated period and nothing could extend the period secured by express contract. The landholders taking advantage of this decision began to insert conditions to quit the land at the end of the term in all muchilikas and Pattas. Mr. Ramadoss refers to this practice at pages 18 & 19 of his introduction to the Estates land Act and the Madras H. Court in Zemindar of Challapalli V. R. Somayya[1] observes 'In this connection it has to be borne in mind that numerous instances have come before courts in which subsequent to the decision of Chokalinga's case, Zemindars succeeded in inserting in Pattas and Muchilkas terms negativing the the existence of occupancy rights etc. . . . . .' This observation clearly shows that very little weight could be attached to such conditions in Pattas and Muchilkas subsequent to 1870. The Privy Council

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1. 27 M. L. J. 718.

seems to have ignored this aspect of the matter altogether where it considered that the conditions in the leases prior to 1908 were binding upon the tenants as valuable admissions.

In Nandigam Subbarayudu V. Kanna Sahib [1], it was held that at any rate conduct of the landlord and tenant subsequent to 1898 should not be taken into account as the first draft of the Estates Land Act was then prepared. Even this working principle would help the court to a great extent in arriving at the true nature of the grant thereby eschewing much of fabricated evidence.

(11) The forum which the plaintiff suing in ejectment had formerly adopted in Rent suits and distraint proceedings started by him against the tenants shows a consciousness as to whether the tenants have occupancy rights. But it is by no means conclusive as the choice of a wrong forum by the plaintiff in former litigation out of ignorance cannot be invoked to his prejudice when other evidence is strong enough to disprove occupancy rights.

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1. 1919 M. W. N. 836.

CHAPTER VIII.

Burden of proof and presumptions re occupancy rights.

The most important question with reference to occupancy rights is the question of Burden of proof and the presumptions to be drawn in favour of the landlord or tenant. No part of the law relating to occupancy rights has been more often dealt with by the courts and out of the medley of Judicial decisions, it is proposed to enunciate a few principles as determined by the authoritative decisions of the Privy Council and the Madras High Court.

The Burden of Proof has to be seperately discussed with respect to Inams and Ryotwari lands.

(a) Inams. A consideration of the Burden of Proof in suits dealing with Inams may be dealt with as relating to distinct periods, the period prior to the Privy Council decision in Suryanarayana V. Pothanna and that subsequent to it. It has been already discussed at length as to how the Hindu and Muhammedan notions of the ownership of land have recognised the idea of private property and the king's right was only restricted to a portion of the produce in lieu of the protection of the subjects. It has also been shown how the declarations of the Govern

ment in the Regulations, Acts and orders has been in accordance with such a theory. The Privy Council also apprcved of it in Collector of Trichinopoly V. Lakhamani[1] and it was also pointed out that the decision of the latter Privy Council so far as it related to the sovereign's rights in the soil was wrong and based upon the feudal notions prevailing in England.

The Bombay High Court in the earliest decision of Krishnarao V. Rangarao [2] and the later decisions Narayan Mandalik V. Desai, [3] Rajya V. Balakrishna [4] has repeatedly held that Sanad grants in Saranjam, Inam etc. are generally speaking more properly described as alienations of land revenue, or of the Royal share of the produce in the land rather than grants of land in popular parlance so called and that only where express words are employed in the grant, the ownership in the soil would pass. The Bombay High Court drew a presumption in favour of the tenant but the decision in Guru Rao V. Secretary of state [5] was reversed by the Privy Council in Secretary of state V. Lakshmibai. [6] The Privy Council referring to its own decisions in Suryanarayana V. Potanna[7] and Chidambara V. Veeramareddi [8] emphasized that there was no such presumption and that each case must be considered on its own facts. Tho later Privy Council in Secretary of

1. 25 W. R. 358.
2. 4 Bom. H. C. R. 1
3. 1 Bom. 523
4. 29 Bom. 415
5. 41 Bom. 408
6. 44 M. L. J. 471 P. C.
7. 41 M. 1012 P. C.
8. 45 Mad. 586 P. C.

state V. Girzabai [1] confirmed the view and observed 'It would seem to follow from the nature of Saranjams that whether they were grants of the soil itself or of the Revenue only of specified lands, they could not and were not meant to interfere with the rights in those lands existing previously to and at the time of the grant.'

Coming to the decisions of the Madras High Court, the earliest decisions beginning with Alaigaya V. Swaminathan [2] do not seem to lay down any hard and fast rule w. r. to burden of proof and presumptions. The Full Bench case in Krishnaswami V. Varadaraja [3] and the decisions in Tyagaraja V. Gnana Sambhanda [4] and Thiagaraja V. Gnana Sambhanda Pandara Sannidhi [5] related to temple properties. The F. B. case proceeded to discuss customary rights and having found the defendants' possession for over 70 years laid the burden on the plaintiff to show absence of occupancy right in the defendants. The other two cases related to muchilkas where the tenants described themselves as Purakudis and agreed to hold the lands as tenants at the will of the landlord. The burden was laid on the defendants to prove rights of occupancy and it was held that a right to possession must follow an instrument negativing occupancy rights unless a subsequent grant of occupancy rights was proved.

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1. 53 M. L. J. 431 P. C.
2. 1 M.H.C.R. 264.
3. 5 M. 345 F. B.
4. 7 Mad. 374
5. 11 Mad. 77.

In Apparao V. Subbamma[1], it was held that every tenant was not a tenant-at-will and the right to eject must be made out by the plaintiff. The case of an Inamdar (Agraharamdar) directly arose in Achayya V. Hanumantarayudu[2] where a landlord was held entitled to eject unless occupancy rights were proved by the defendant. The decision has been a subject of comment in later decisions but really seems to have proceeded on its own peculiar facts. The title of the plaintiff was more or less conceded and a similar plea of occupancy rights was negatived in a prior Suit. The next case of Venkatacharlu V. Kondappa [3] clearly laid down that plaintiff was bound to prove the right to eject even though the defendants failed to prove their occupancy rights.

The principle was approved in the cases that followed VenkatamahalashammaV Ramajogi[4] Venkata Narasimha Naidu V. Kotayya[5] & Cheekati Zemindar V. Ranasooru Dora [6]. These cases related to Estates but the learned Judges observed that there was no distinction between the Government, the Zemindar and the Inamdar. In fact the two latter cases have been the leading cases prior to the Privy Council in Suryanarayana V. Pothanna[7]. They boldly proclaimed that the Zemindar was coowner with the tenant, that he was entitled only to melvaram, that the tenant can in no sense be said to be claiming

1. 13 Mad. 60
2. 14 Mad. 269
3. 15 Mad. 95
4. 16 Mad. 271
5. 20 Mad. 299
6. 23 Mad. 318.
7. 41 Mad. 1012 P. C.

through the Zemindar and that the tenants were entitled to the possession of land so long as they pay their dues regularly. These decisions may be said to have laid down the presumption of the existence of a melvaram right only in the Zemindar, Inamdar or Government. The case of Cheekati Zemindar V. Ranasooru Dora[1] went further and pointed out that the tenants admitted into waste or abandoned lands in an estate must be deemed to be in possession on the same terms as the other occupants of Zemindari lands.

The principle that the Plaintiff as Inamdar was bound to prove his right to eject has been followed in Maddu Yerayya V. Kangalu Naidu [2] Lakshminarasimha Rao V. Sitaramaswami [3] Venkata Narasimha Apparao V. Subbareddi [4], Narasimhachari V. Ramabrahmam[5], Tadikonda Buchi Veerabhadrayya V. Venkanna [6] Venkatramayya V. Narayudu [7] Gullapalli Bhadrayya V. Puttagunta Bapayya[8] Suryanarayana V Pothanna [9] and Venkatasastrulu V. Sitaramudu[10].

But where the defendants admitted that they were let into possession as tenants, the burden of proving occupancy rights was placed on the defendants.

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1. 23 Mad. 318
2. 34 Mad. 246—20 M.L.J. 764
3. 24 M. L. J. 288
4. 24 M. L. J. 655
5. 24 M. L. J. 656
6. 24 M. L. J. 659
7. 12 M. L. T. 313
8. 21 M. L. J. 803
9. 38 Mad. 608
10. 38 Mad. 891

In this connection reference should be made to the cases of Marapu Tharalu V. Telukula Neelakanta Behara [1] and Indeti China Nagadu V. Potukuchi Venkata Subbayya [2].

Both these cases seem to have at first sight departed from the general rule laying the burden on the Inamdar or Zemindar suing in ejectment and have been adversly commented upon and dissented from in later rulings. But in the first, of these cases Marapu Tharalu V. Nilakanta Behara [1] the very opening lines of the Judgment declare that the defendants admit that they became tenants of plaintiffs. But it is unfortunate that the Judges drew a distinction between Zemindaries and Inams and observed that the same principles do not apply to both In the other decision Indeti China Nagadu V. P. Venkata Subbayya,[2] the burden was laid on the defendants on the ground that they had to prove the facts which ousted the jurisdiction of civil courts. The principle so laid down is no doubt correct as it views the question from another standpoint but ignores the general principle of the Evidence Act that the burden of proof always lies initially on the person who would fail if no evidence is let in the suit. The initial burden of proof would lie on the plaintiff and then the defendant has to make out his occupancy rights. The anamoly which is thus created was noted in T. Buchi Veerabhadrayya V. Sonti Venkanna [3]

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1. 30 M. 502. 2. 1910 M.W.N. 639. 3. 24 M. L. J. .569.

Their Lordships observe 'The anamoly seems apparently to exist in the onus being placed on different parties in the same suit. This can only be avoided by presumptions.'

The decisions have been so far uniform in declaring that a presumption exists in the case of Inams that they were only grants of melvaram, the case of Zemindaries not being material as Act I of 1908 recognised the occupancy rights of ryots and that the burden lay upon the plaintiff to prove his right to eject. There is no presumption that the Inamdar was the owner of the Kudivaram at the time of the grant and where such a fact is proved, the presumption of melvaram rights in the Inamdar is rebutted.

In Jagannadhacharyulu V. Kutumbarayudu [1] it was held that there was no presumption that the Inamdars did not own the kudivaram at the date of the grant. This was followed in Nainapalli Markayar V. Ramanathan [2]. But this principle is in conflict with the presumption above laid down that an Inamdar is prima facie entitled to melvaram only thus indicating that he should establish his ownership of kudivaram at the time of the grant.

In this state of the law, the two cases Suryanarayana V Pothanna [3] and Venkatasastrulu V. Sitaramudu [4]

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1. 39 Mad. 21
2. 33 M. L. J. 84
3. 38 Mad. 608
4. 38 Mad. 891

went upto the Privy Council. With the Privy Council decisions came the change of law. The Privy Council negatived the initial presumption of melvaram interest alone in the Inamdar and left the courts to the consideration of the two facts the plaintiff's title to eject and the defendant's proof of occupancy rights, irrespective of presumptions one way or the other.

The Privy Council in Suryanarayana V Pothanna[1] did not consider the question of Burden of Proof but only the question of presumptions with reference to Inams. But there was no pronouncement by their Lordships that an Inam grant consisted of both the warams or only of the melvaram. They did not go further than declare that an Inam grant might consist of both the warams. The next Privy Council case in Venkatasastrulu V. Sitaramudu [2] affirmed the previous decision and observed that there was no presumption of melvaram in case of grants to Brahmins. Each case must be considered on its own facts.

The grant and the Dumbalas filed in the case, tenancies for short periods and variable rents led their Lordships to conclude that the grant was of both the warams and consequently the tenants were held to have no occupancy rights.

Another Privy Council case Sethurathnam Iyer V. Venkatachala Goundan [3] may be referred to in this

1. 41 Mad. 10 12 P. C.
2. 43 Mad. 166 P. C.
3. 43 M. 567—1920 M. W. N. 61

connection. It related to ryotwari tracts and the burden of proof was laid on the tenants claiming occupancy rights as the plaintiff's title was conceded and the defendants admitted having held under, if not from the plaintiff. As has been observed above, the Privy Council decisions only destroyed the presumption existing w. r. to Inams but left the question of Burden of proof as before.

But doubts arose as to the scope of the Privy Council decisions and in Gadadhar V. Suryanarayana Patnaik[1] the chief justice held that the Privy Council presumed an Inam grant to be of both the warams. An observation in Nandigam Subbarayudu V. Kanna Sahib[2] was also interpreted to mean the same. This occasioned a decision by the Full Bench of the Madras High Court in Muthu Goundan V. Perumal Iyer[3]. Wallis, Coutts Trotter and Ramesam JJ held that the Privy Council decisions did not expressly lay down any such presumption but that such a presumption was deducible from the grounds on which the Judgments were based. This occasioned the pronouncement of the Privy Council again in Chidambara V. Veeramreddi.[4]. The Privy Council held the Full Bench was in error in coming to such a conclusion and observed that each case must be dealt with upon its own facts with special regard to the evidence and circumstances therein.

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1. 38 M. L. J. 342.
2. 1919 M. W. N. 836.
3. 1921 M.W. N. 263 F. B.
4. 1922 M. W. N. 749 P. C.

Another point was also adverted to by the Privy Council in that case, that when evidence was adduced on both sides, it was not necessary to decide on which party the burden of proof lay.

In Nainapalli Markayar V. Ramanathan [1] the Privy Council considered the question of burden of proof again. The question of presumptions was not referred to. Their Lordships held on the authority of the two Privy Council cases Secretary of State V. Lakshmeswar Singh [2] and Seturatnam Iyer V. Venkatachela Goundan [3] that the burden of proof in establishing occupancy rights layupon the tenants. On the facts of the case the defendants were admittedly tenants of temple lands and received notices to quit. It has already been pointed out that in suits for ejectment the initial burden of proving a right to eject lies upon the the plaintiff and where the defendants admit their tenancy under the plaintiff or where the plaintiff proves his right to eject otherwise, the burden proving occupancy rights lies upon the tenants. The Privy Council case in Nainapillai V. Ramanadhan is of the later category of cases. Except in cases where the defendant admitted having come into possession as a tenant, the Burden of proving the right to eject was laid on the plaintiff. This involves the proof so far as Inams are concerned, that the plaintiff owned the Kudivaram at the time of the grant or that subsequent to the grant the plaintiff acquired the Kudivaram

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1. 46 M.L.J. 546 P.C. 2. 16 Cal. 233 P.C. 3. 43 Mad. 567 P.C.

interest of the tenant by surrender or abandonment under Sec. 8 of the Madras Estates Land Act. Refer Periakaruppan V. Aiyanar[1] Zemindar of Parlakimidi V. Yalla Ramayya[2] Venkata Subbarao V. Sivaji [3], Sri Raja Venkata Rangiah Apparao V. Bapiraju [4] and Annamdevula Tata V. Khwaja Ahmedullakhan [5].

In Tirupathi Goundan V. Shama Goundan [6] the Privy Council case in Nainapalli Markayer V Ramanadham chetti was referred to and their Lordships observe 'That being so it is for the respondents to prove that they have occupancy rights'. Though not expressly noted in the Judgment the defendants seem to have admitted their tenancy. The decision is important in another respect. The suit grant being one of wasteland their Lordships observe that the grant was of both the warams.

As to what is meant by letting into possession and the relation of landlord & tenant between the Plaintiff and Defendant, the decision of Phillips J. merely laid down the principle without elucidating the above matter An attempt to reconcile the decision in Sivaprakasa. Pandara Sannidhi V. Veerama Reddi [7] and Nainapalli Markayar V. Ramanadhan [8] was made in Zemindar of

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1. 49 M. L. J. 602.
2. 51 M. L. J. 510—1927 Mad. 10.
3. 1927 Mad. 946.
4. 45 M. L. J. 238.
5. 48 M. L. J. 701.
6. 48 M. L. J. 654.
7. 45 M. 586 P. C.
8. 47 Mad. 337 P. C.

Parlakimidi V. Ramayya[1] where Phillips J. observes that the Privy Council case throwing the burden of proof on the tenant applied only where the Inamdar was proved or admitted to be the owner of the land itself. The words 'Tenant of lands' must mean 'Tenant of lands belonging to his landlord' that is to say the landlord must have a right not merely to the melvaram but the land itself.

No doubt 'let into possesion' can only refer to the Defendant's taking possession of the land as a tenant either from the Plaintiff or his predecessors in title and implies a lease or other contractual relation at the inception. But a recent decision of Wallace & Odgers JJ. in a Letters Patent appeal against Periakaruppan V. Naiyanar [2] establishes a new line of thought. The learned Judges held that the kudivaramdar was not a coowner with the melvaramdar, that he is a tenant of the melvaramdar by the mere fact of his paying the melvaram and that the words tenant & kudivaramdar are coextensive in their meaning as used in the Privy Council case of Nainapillai V. Ramanadhan. The learned judges hold that there is a conflict between the two Privy Council decisions but the later decision in Nainapillai case was binding upon them. The rulings in Venkata-Narasimha Naidu V. Kotayya[3] and Cheekati Zemindar V. Ramasooru Dora [4] where it was pointed out that Melvaramdar and Kudivaramdar are coowners and that the melvaram paid to Zemindar can never be called rent

1. 51 M. L. J. 510 P. C.
2. 1929 Mad. 617.
3. 20 Mad 299.
4. 23 Mad. 318.

were not referred to. The Logical result of the decision would be that in all cases where the Defendant is a kudivaramdar paying melvaram to the Plaintiff, the relation ship of landlord and tenant is established and Plaintiff is primafacie entitled to eject unless Defendant established his rights of occupancy. The judges further hold that even if it be held that a tenant does not cover one who is found to be cultivating under an overlord, unless the correct inference from the facts is that he was let into cultivation by that overlord, that inference would following this case as in Nainapillai's case from the absence of any evidence that at the time ofthe grant ofthe Inam, there were any tenants ofthe land of the Inam who had any right of permanent occupancy.

The following principles as regards Burden of proof w. r. to Inams may be laid down for guidance.

(1) Each case depends upon its own facts, there being no presumption that the grant was of the melvaram alone or of both the warams.

(2) The Plaintiff suing to eject should make out his title to eject and the initial burden lies upon him.

(3) But when the defendant admits having been *let into possession of the land* by the landlord or his predecessor in title, who was the owner of both the warams at such a letting, the Burden lies on the tenant to establish his right of occupancy.

(4) In case of waste or forest land, the presumption is that both the Warams were granted.

Ryotwari Tracts. In ryotwari tracts, the Government is the Melvaramdar and the Pattadar is the Kudivaramdar. Permanence is not an integral and universal incident of an underryot's holding and the Burden of proving occupancy rights lies upon the under raiyat as was held in Subramania V. Subramania P. C. [1] The earlier P. C. cases of Seturatnam Iyer V. Venkatachela Goundan [2], Sivaprakasa V. Veeramareddi [3], and Nainapillai V. Ramanathan [4], were referred to. In Ponniah Nadan V. Deivani Annual [5] the incidents of the ryotwari system were discussed and the ryotwari Pattadar was presumed to be the owner of the land.

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1. 57 M. L. J. 1.
2. 43 Mad. 567.
3. 45 M. 586.
4. 47 Mad. 337.
5. 9 L. W. 453.

CHAPTER IX.

Minor Inams and occupancy rights.

The case of Minor Inams is a matter of very great importance and the intentions of the legislature and the trend of judicial decisions have been the subject of much comment in these days. Grants of particular extents of land in particular villages in contradistinction to grants of a whole village or villages are known as minor Inams (Refer Gopisetti Narayanaswami V. Subrahmanyam [1]) and they might be Pre-Settlement or Post-Settlement. The latter are also called Darmilla Inams. These Inams have their origin in consideration of services past or future and might consist merely of the Melvaram alone or of both the Warams. If such grants consist only of the Melvaram, the persons in occupation of the land have occupancy rights and the Inamdar cannot eject them.

As has been well observed by Ramesam J. in Muthu Goundan V. Perumal Iyer [2], some special considerations arise when the grants are major Inams. ' Firstly, it could not have been intended that the grantee should cultivate the whole village himself and secondly it is very unlikely that a whole village would be a village of

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1. 2 L. W. 683. 2. 1921 M. W. N. 263 F. B.

waste lands. Some lands at least would have been cultivated and it could not have been intended to affect the rights of such cultivators whatever they are. Both these considerations disappear when we come to grants of small extents. When we remember that these Inams were granted to favourites or poor dependants, one would think that the subject matter of the grant was intended to cover all that can be extracted from the soil. It seems to me that the smaller the area granted, the stronger the presumption in favour of the Inamdar'. Equally effective are the words of Kumaraswami Sastri J. in Bavaji Mahant V. Suryanarayana Patnaik [1] that the object of the grant in such cases was to allow the grantee to enjoy the lands on favourable terms and not to create minor land holders. The presumption therefore in minor Inams ought to be that the grant comprised of both the Warams but judicial decisions have consistently refused to draw any such presumption.

It has to be considered next as to how far the minor Inams would come under the Madras Estates Land Act so as to confer occupancy rights on the cultivating tenant. Before considering the judicial decisions the scope of the important sections of the Act would be indicated. The Act itself is called the Madras Estates Land Act. The preamble also declares that it was expedient to declare and amend the law relating to the holding of land in Estates. It is clear that the geographical inclusion within the ambit of the Zemindari is not the criterion.

1. 1921 M. W. N. 413.

Next Sec. 3 cl. (2) defines an Estate. The first three clauses can have no application as having a reference to Estates, Jagirs and Palayams. Cl. (e) and cl. (d) refer to whole Inam Villages, cl. (e) referring to villages in Estates coming under clauses a, b, & c, held on a permanent under tenure and cl. (d) to Inam villages recognised by the Government being grants of Melvaram to persons not owning the Kudivaram thereof. It is thus clear that minor Inams whether pre-settlement or Post-settlement cannot be included by any stretch of reasoning under any of the five clauses in the definition of Estate. The definition of a Landholder in Sec 3 cl. (5) runs thus 'Any person owning an Estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the Estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent court or any provision of law ; This definition contains three clauses.

(1) Any person owning an Estate.

(2) Any person owning a part thereof-Evidently the minor Inams donot come under the two clauses.

(3) Any person entitled to collect the rents of the whole or any portion of the Estate etc. If at all, minor Inams canbe brought under this clause alone and the judicial decisions have centred themselves on the interpretation of this clause.

Pre-settlement minor Inams :—These Inams do not form part of the Estate when they have not been included in the assets thereof at the Permanent Settlement. In such cases as the Act does not apply, the considerations are the same as would govern occupancy rights apart from the Act. The following observation in Chidambara Gurukkal V. Sivagnana Sundaram Pillai[1] is helpful to us in this connection. 'Sec 3 (2) cl (d) does not in terms apply as the suit concerns not a village but only a small plot ofland. The point has however to be decided with reference to considerations similar to those that would apply if the case fell under that section. The case of Periakaruppan V. Naiyanars [2] was also decided on such considerations.

In Mahant of Balajimutt V. Suryanarayana Patnaik[3], Sadasiva Iyer J. while considering the nature of post settlement grants, observes that some Inamdars to whom Inams had been granted before the Permanent settlement without reservation of Jodi or kattubadi would still escape falling under the definition of Landholder' (P.307) Where Jodi or kattubadi are reserved bythe Zemindar, the presumption would be that at the time of Permanent settlement, such Inams were included in calculating the assets. Then they form part ofan estate and cl (a) of sec 3 (2) applies. In Koppireddi Nookayya V. Mandalika Bhimanna[4], the grant

1. 47 M. L. J. 598.
2. 49 M. L. J. 602.
3. 1920 M. W. N. 303.
4. 45 M. L. J. 91.

was of the year 1800 and the courts considered the question whether it was included in the assets. Brahmayya V. Achiraju[1] was quoted as an authority for the proposition that the Act applied to minor Inams, where they formed part of an estate (P. 96)

Nor is the minor Inamdar a land holder within the meaning of the Act where the grant was prior to settlement. (Refer Virabhadrayya V. Sonti Venkanna [2] and Sanyasi Naidu V. Venkatacharyulu [3]).

Post settlement minor grants:—Though there has been a good deal of controversy as to the question whether such Inams are governed by the Estates land Act, the matter at present is governed by the authoritative pronouncement in the F. B. case Brahmayya V. Achiraju referred to above. All the decisions have attempted to interpret the clause in the definition of a Landholder 'Every person entitled to collect the rents of the whole or any portion of the Estate by virtue of a transfer from the owner or his predecessor in title or of any order of a competent court or any provision of law'.

In Appala Narasimhulu V. Sanyasi [4], it was held that a post settlement grant of a portion of a Village cannot be brought under the definition of an estate in sec 3 (2) d & e but such an inamdar was a landholder under Sec 3 (5) of the Act. An earlier decision of Abdur

1. 45 Mad. 716—1922 M.W. N. 280 F.B.
2. 24 M. L. J. 659.
3. 1.L. W. 241
4. 38 Mad 33

Rahim J. in Suryanarayana V. Ballayya [1] was followed. The same view was held in Nukanna V. Sanyasi Naidu[2] Brindavanachaudra Harischandra Raja V. Ramayya [3], and Tungala Mallanna V. Gothumukkala Ramaraju [4]

In Kanti Venkanna V Sri Rajah Chelikani Ramarao[5] the grantee was an alienee of a portion of Melvaram due on some lands forming part of an Estate, the same principle was applied and no distinction was drawn between a grant of Melvaram only or of both the warams The grant was a remission in perpetuity of a portion of the Melvaram and the grantee was to pay only a favourable kattubadi.

In Maharajah pf Vizianagaram V. Collector of Vizagapatam[6], the question arose indirectly with reference to Seperate Registration under Act. I of 1876 and the learned Judges held that grantees in perpetuity subject to the payment of a small Jodi, kattubadi or poruppu were not landholders but only perpetual lessees of the Zemindar. The P.C case Venkateswara Yettiappa Naicker V. Alagamothoo [7] was followed. The grant, it was held, could not connote a transfer of ownership which was necessary to effect Separate Registration under Act. I of 1876.

It was pointed out in Chipurupalli Appayya V. Kakarlapudi Ramachendraraju [8], that the Estates Land

1. C. R. P. No. 895 of 1910
2. S. A. No. 168 of 1912
3. 26 M. L. J. 600
4. 23 I. C. 531
5. 38 Mad 1155
6. 38 Mad. 1128
7. 8 M. I. A. 327 at 338
8. 27 M. L. J. 490.

Act was not intended to be confined in its operation only to estates in their entirety which fall under one of the five clauses in sec 3 (2). Parts of an Estate are also within the scope of the Act.

The case of Duddumpudi Venkatrayudu V. Bikkina Subbarayudu [1] was one relating to merger of kudivaram and Melvaram interests. The grant was a post settlement grant of Melvaram and the grantee was found to own the kudivaram as well. Sec 8 clause (1) of the Estates Land Act was applied and the grantee was held to be a landholder. In Gadadhar Doss V. Suryanarayana Patnaik [2], the Judges differed as to the application of the Estates Land Act to a grant subsequent to the Permanent Settlement subject to the payment of a kattubadi. Sadasiva Iyer J. was unwilling to depart from the catena of decisions but Wallis C. J. construed the sections of the Madras Estates Land Act so as to exclude such inams. The learned Judge held that when sec 3 (2) cl (d) referred to Melvaram grants of Villages or seperated parts of such Villages and sec 3 (2) cl (e) referred to whole Villages held on a permanent under tenure, the intention of the legislature would not have been to include minor Inams in the definition of a landholder. Such an Inamdar could not be a landholder. The Zemindar would still be the landholder or owner of the land. Nor can an Inamdar holding an Inam subject to a kattubadi be said to collect rents in his Estate.

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1. 1918 M. W. N. 643.

2. 1920 M. W. N. 303.

Sadasiva Iyer J. extended the meaning of the word rents so as to include profits from land.

The decision was taken up in a Letters Patent Appeal [1] and Ayling and Coutts Trotter JJ held that an Inamdar holding a post settlement grant of both the Warams was a landholder under sec. 3 cl (5). Kumaraswami Sastri J dissented. In Bhupatiraju V. Venkataratnam [2], an interest in the portion of a Melvaram as by payment of a kattubadi without a right to collect rents of the estate was held not to convert a ryot into a landholder. The grant in the case was construed as a permanent lease.

The Full Bench in Jarugumilli Brahmayya V. Challaghali Achiraju [3] set the conflict at rest, Venkata Subbarao, Oldfield and Phillips JJ. holding that the word Landholder incudes the Minor Inamdars of Post settlement grants while Schwabe C. J. and Devadoss J. held the other view. The Full Bench has been followed in a number of subsequent cases, Suryanarayana V. Bulleyya [4] Second Appeal No. 1774 of 1923[5].

In Second Appeal No. 318 of 1925 [6] Jackson J applied the principle of the Full Bench which related to

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1. 1921 M.W. N. 413—44 Mad. 677
2. 1921 M. W. N. 821.
3. 45 Mad. 716—1922 M. W. N. 280.
4. 1927 Mad. 568—52 M. L. J. 323.
5. 51 M. L. J. (S. N.) 10.
6. 52 M.L.J. (S.N.) 18.

a case of both the Warams, to a Post settlement Melvaram grant in favour of a person owning the Kudivaram at the time of the grant. The scope of this decision would be considered later.

The settled law therefore with reference to the post settlement Minor Inams whether of the Melvaram only or of both the Warams is that they are governed by the Estates Land Act. In spite of the long catena of decisions, we venture to suggest that the inclusion of Minor Inams in the Estates Land Act is not only opposed to law, but also iniquitous and improper.

(a) When one considers the origin of such minor grants, there can be no hesitation in holding that the grantee was intended to enjoy the lands and not merely the Melvaram thereof.

(b) The consideration with reference to whole villages disappear in the case of Minor Inams as has been referred to by Ramesam J. in Muthu Goundan V. Perumal Iyer [1] and the smaller the extent granted the greater the presumption that the grant is of both the Warams

(c) Again, the grants being to servants or other dependants of the Zemindar, it cannot be supposed that their position should be made worse than that of a tenant. The remission of a portion of a kattubadi is the advantage which such grantee derives in addition to the rights of a tenant.

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1. 1921 M.W.N. 263 F. B.

(d) Nor can such remission be viewed as a transfer of the right to collect rents from the occupancy tenants of an Estate under Sec. 3 cl. (5). In fact, there is no collection of rent at all by the Inamdars in question.

(e) The last clause in Sec. 3 cl. (5) in the definition of a 'landholder' was intended to refer to the cases of mortgagees, Receivers appointed by the court etc. and to cases of transfers of a portion of the Melvaram in the Estates.

(f) The sections of the Estate Land Act should be read together and the definitions of an 'Estate' and 'Landholder' must be so interpreted as to reconcile one with the other. A construction which would not conflict with what precedes and what follows should be adopted in each case. (Refer Judgment of Devadoss J. in F. B. case of Brahmayya V. Achiraju).

(g) The very definition of the Word 'Estate' and the scope of the Act clearly point out to the conclusion that it was not the intention of the legislature to include Minor Inams whether presettlement or Post settlement under the Act.

(h) There is no reason why the Act should be so anamolously interpreted as to exclude some Presettlement minor grants and include Post settlement ones.

(i) The remission of a portion of the Melvaram should be interpreted as a permanent lease at a lower rent in consideration of services rendered.

These are some of the many considerations which we submit so that the legislature might interfere in excluding the Minor Inams both Presettlement and Post settlement from the provisions of the Act A Bill to amend the Madras Estates Land Act is said to be in preparation by the Select Committee and the exclusion of Minor Inams from the Scope of the Act would be a boon conferred on such Inamdars who are in the vast majority of cases poor middlemen rather than rich Landowners.

CHAPTER X.

Occupancy Rights.

Surrender, Abandonment and merger.

The previous chapters of the work have been devoted to consider the acquisition of occupancy rights by custom, grant, prescription and operation of law. It has also been alluded to that in certain kinds of land it is not possible to acquire occupancy rights. Old waste has been defined in Sec. 3 cl. (7) A tenant of old waste as any other non-occupancy ryot under the Act can acquire occupancy rights under Sec 46 and Sec. 188 declares that nothing in any contract between him and the landholder, takes away or limits his right to acquire the status of an occupancy ryot.

Private land has been defined in Sec. 3 cl. (10.) Except as has been expressly provided in the Act, the relationship between a tenant and his Landlord with respect to private land is not governed by the provisions of the Madras Estates Land Act. Nor is it possible to acquire occupancy rights therein in view of the provision in Sec. 181 of the Estates Land Act. But the proviso declares that it is open to a landholder to convert his private land into ryoti land.

The Act further imposes a restriction on ijaradars or farmers of rent. Sec 6 cl (6) provides that an ijaradar

or a farmer of rent while so holding cannot acquire otherwise than by inheritance or devise a right of occupancy in lands comprised in the ijara or term. Refer Butchayya V. Apparao P. C [1].

A sub lessee by his possession of ryoti land cannot acquire occupancy rights. The same is the case even when he was given a patta directly by the Zemindar. In re Kakarapalli V. Potaraju [2].

Sec 6 (4) also provides that where a tenant has been admitted into waste land for pasturage of cattle or into land reserved for forest under a contract for temporary cultivation with agricultural crops, the person so admitted would not get rights of occupancy. Refer Maharajah of Venkatagiri V Velikanti Ramireddi [3]. In waste lands reclaimed by his own servants or hired labour, the landlord can prevent the tenants from acquistion of occupancy rights by express contract for a period of thirty years (vide sec 6 (15))

The principle underlying the Madras Estates land Act is embodied in the saying 'once a ryoti land, always a ryoti land'.

We have to examine how far the principle has been effected by the doctrine of Merger. The distinct interests of Melvaram & Kudivaram can become coalsced in

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1. 44 Mad. 856—14 L. W. 168 P. C.
2. 2 L. W. 270—28 I. C. 277.
3. 3 L. W. 582—31 M. L. J. 211.

the same person. The Melvaramdar can acquire the Kudivaram interest in the land by transfer, inheritance or devise or the kudivaramdar might surrender or abandon the holding to the Melvaramdar. The converse case where a Kudivaramdar acquired the Melvaram interest in the holding is not also unfamiliar.

Sec. 8 (1) of the Estates Land Act enunciates in general the doctrine of Merger. It can be asserted that the draftsmanship of the Estates Land Act is very unhappy and leaves much to be desired. The clause above referred declares in clear language that the person in whom the entire interest of the landholder and the occupancy ryot become united by transfer, succession or otherwise whether before or after the Act, shall hold the land as a landholder and not as a ryot. The legislature seems to have entirely forgotten for the moment the earlier provision in sec 6 cl (6), where an occupancy ryot was held to retain the same status in spite of his subsequent acquisition of the landholder's interest or his holding the land in ijara or farm.

Accordingly sec 8 cl (1) was held to refer to the acquisition of occupancy rights by a Landholder and not to the case of a landholder's right by the ryots. It was also pointed out that the scope of the general provision in sec 8 (1) would not affect the special provision in sec (6) cl (6). Refer Zemindar of Sanivarapupeta V. Zemindar of South Vallur [1] and Muthu Reddi V. Muthu Venkatachelapati [2].

1. 39 Mad. 944. 2. 31 M. L. J. 354.

It is now settled law that the acquistion of Melvaram rights by a kudivaramdar does not render the holding an estate. We are already familiar with the wording of sec 3 (2) cl (d) to a person not owing the Kudivaram thereof, with reference to the Inam Villages. The principle is applicable to Pre-settlement and Post settlement grants. It has been so held by the Madras High Court in Marina Veeraswami Boyinapalli Venkatrayudu [1] and Manikyamba V. Pasala Mallayya[2]. Such Inamdars were held not to fall under the definition of a landholder in Sec 3 cl. (5) of the Act. The principle so enunciated does not seem to have been kept in view by Jackson J. in S. A. 318 of 1925 [3] where the F. B. case of Brahmayya V. Achiraju was applied and a grant of the Melvaram rights, to a person who owned the Kudivaram thereof at the time of the grant was held to fall under the provisions of the Estates Land Act.

The next point we have to consider is the case of a Melvaramdar acquiring the kudivaram interest by transfer, succession or otherwise. Sec. 8 (1) clearly declares that the landholder should hold the land as a landholder only and not as a ryot. Sec 8 cl (2) provides an exceptional case of one of the landholders acquiring the kudivaram interest in the holding. It has been held that the transferee colandholder is a ryot so far as the

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1. 39 M. L. J. 225 F. B.
2. 47 M. L. J. 393.
3. 52 M. L. J. S. N. Page 18.

other landholders are concerned but where he lets any person into possession of the land, the person so letting gets the occupancy rights.

The doctrine of Merger so enunciated (strictly speaking Non-merger, is subject to limitations imposed by the other provisions of the Act.

(a) The exception to sec (8) provides that when an Inamdar acquired the kudivaram interest in any estate falling under sec 3 (2) cl (d), the land ceases to be part of the Estate. The word acquired in this clause has been the subject of difference of opinion in the several decisions. It was interpreted to include only cases of transfer or succession but not surrender or abandonment. Refer Judgment of Sadasiva Iyer J. in Suryanarayana V. Potanna [1], & Venkata Sastrulu V. Sitaramudu [2], On the other hand, Miller J. in Ponnuswami V. Karuppudayan [3] and Spencer J. in Suryanarayana V Potanna [1] held that surrender and abandonment are included in the word 'otherwise' in Sec. 8 (1). The difficulty lay in construing the word otherwise Ejusdem generis with transfer or succession. Seshagiri Iyer J. in Venkatasastrulu V. Sitaramudu went to the length of saying the inclusion of surrender or abandonment in 'otherwise' would be obnoxious to the principle of Ejusdem generis. The matter has now been set at rest by the F. B. decision in Jammalamadaka Subbarayudu V. Idipuganti Ramaswami [4] wherein it was held that

1. 38 Mad. 608.
2. 38 Mad. 891.
3. 38 Mad. 843.
4. 50 M. L. J. 535 F. B.

the word 'otherwise' should not be interpreted Ejusdem generis and that 'acquired' in the exception is wide enough to include all cases of the interest of the land-holder and occupancy ryot becoming united in the same person.

Further the Inamdar referred to in the exception must be the owner of the entire interest in the Inam. It has been accordingly held in Rajachari V. Thirumoogo Devasthanam[1], that a fractional sharer in an Inam Village does not come under the exception and the general principle in sec 8 cl (1) would apply.

(b) Again under sec 6 (2), where land held by a ryot with permanent rights of occupancy is surrendered or abandoned or save in cases falling under sec 8 cl (4; or exception to sec 8 comes into possession of a Landholder, and the landholder admits any person into possession of the same within a period of ten years from the date is surrender, abandonment etc., the person so admitted has a right of occupancy. Since the F B case in Subbarayudu V. Ramaswami[2] decided that 'otherwise' in sec 8 (1) includes surrender and abandonment this provision becomes unnecessary. The period of ten years is only to exclude the land from falling under the definition of old waste.

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1. 1918 M. W. N. 506—41 Mad. 724.
2. 50 M. L. J. 535 F. B.

(c) Sec 8 cl 4 provides for three cases wherein occupancy rights are prevented and the principle of holding the land only as a landholder was held inapplicable.

(1) Where before the passing of the Act the landholder obtained the kudivaram interest by transfer for valuable consideration except at a sale for arrears of rent.

(2) Where the landholder acquired prior to the Act the kudivaram interest by inheritance.

(c) Where the landholder after the passing of the Act obtained the kudivaram interest by interitance.

Occupancy rights are prevented for a period of twelve years from the passing of the Act in the first two cases and from the date of succession in the third case.

Apart from the three exceptions noted above, the operation of sec 8 (1) is not interrupted in Estates falling under sec 3 clauses a, b, c, & e and the landholder has to hold the land only as a landholder and not a ryot. The principle thus enunciated is once a ryot land, always ryoti. The provision on intestacy in sec 10 cl (2) is also in accordance with such a principle.

APPENDIX A.

The Permanent Settlement and exclusion from assets.

The Permanent Settlement was introduced into Bengal by Regulation XIX of 1793. In Madras, however, instructions as to permanently settling lands were issued to the Collectors by the Board of Directors in 1799 and a special commission was appointed in 1802. The Permanent Settlement Regulation XXV of 1802 was passed but the settlement operations were gradually carried on till 1806. The peishcush or the revenue payable by the Zemindars, poligars and other intermediate proprietors was fixed in perpetuity at a definite share of the annual yield of the Zemindaries or the poliams. A history of the permanent settlement as effected in the various provinces can be studied in the Fifth Report on the affairs of the East India Company. (3 Vols), which continues till today as the most valuable document on the subject.

Even as early as 1778, a committee of circuit was appointed to report the state of affairs in Northern Circars about the security which the Natives had for their property, the administration of justice and the annual income of the Zemindaries. The committee was soon replaced by a second in 1782 and continued to prosecute the objects of its enquiry till 1788. Meanwhile James grant of Bengal prepared his Political survey of the Northern Circars (1784) and it was sent to the Board of Directors in 1786 (Vide Fifth Report Vol. III pages 1 to 118).

The accounts of the Circuit Committee were more or less the basis on which the peshcush payable to the Government was fixed and were the accounts nearest in date available to the Government for the purpose of settlement. The Fifth Report however mentions that the knowledge which these reports afford as to the amount of the Revenues and the value and resources of the lands are in a great measure hypothetical (Vol I-145). The Regulation XXV of 1802 and the Sannads issued under it to the Zemindars speak from their dates and it must be assumed that the grants prior to 1802 were considered by the Government in fixing the peshcush payable to them (Refer observations of Ramesam J in Koppireddi Nookayya V. M Bhimanna[1]).

In the computation of assets, certain items of revenue were excluded by the Government. The income from grants or alienated lands which were not binding on the Government was excluded from the assets. The Government reserved its right to continue or abolish such grants. Sec. 4 of the Permanent Settlement Regulation besides mentioning other items of revenue declared that a reservation was made of all taxes on Lakhiraj lands or lands exempt from the payment of public revenue, and of all other lands paying only favourable quitrents.

The preamble to Regulation XXXI of 1802 mentions that the Settlement was made exclusive of alienated lands of every description. The reservation made in Sec. 4 of the Permanent Settlement Regulation must be with reference to alienated lands. The lands of the Zemindar ie. homefarm or Pannai lands were included in computing the assets of the Zemindari. But alienated lands coming under the following heads seem to have been excluded.

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1. 45 M. L. J. 91. Refer also 1929 Mad. 399—117 I. C. 292.

i. *Lakhiraj Lands*-The word 'khiraj' means rent. Lakhiraj implies either lands held rent free or lands the Government dues from which are assigned to any person for his own benefit or appropriated to any public purpose (Vide Glossary appended to the Fifth Report) Lakhiraj lands consist of—

a. Lands exempt from paying public revenue, appropriated for public services and so recognised by the Government—Village Service Inams. Regulation XXIX of 1802, VI of 1831 and now Act II of 1894 & III of 1895 apply to such inams.

b. Land exempted by grant or sanad from paying revenue to Government The Sanad or grant can only be from the Government. The Karnam's Regulation XXIX of 1802 Sec. 11 clauses 2 & 3 enforce upon the karnam a duty of keeping registers showing the lands exempt from paying revenue to Government at the time when the permanent assessment was fixed as also the lands exempt by grant or Sanad from paying such revenues.

c. Sarvadumbala Inams—The lands mentioned in this and the previous clause were ultimately dealt with by the Inam commission and enfranchised about 1860. But the grants by Zemindars rent free to their dependants and reserving personal services were not excluded from the assets of the Zemindaries. The Government had no concern in such lands and the Zemindar was assumed to have received the full tax from the same in the shape of personal services. (Raja Venkata Rangayya V. Appalarazu[1] and other cases.) The Mokhasas of the Masulipatam district are mostly of this type and were included by Taylor in the assets of the Nuzvid Zemindari.

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1. 20 M. L. J. 728.

ii. Lands paying only favourable quitrent, Jodi or Poruppu :—In this case what was excluded from consideration in fixing the permanent assessment payable by a Zemindar is not the quitrent or Jodi payable by the Inamdar but only the difference between the Jodi and the assessment leviable on the lands. The levy of full assessment by the Government does not take away the liability of the Inamdar to pay jodi to the Zemindar (Adapaka Bapanna V- Rajagopalarao [1]; Sobhanadri Apparao V. Gopalakristnamma [2])

Sec. 4 of the Regulation has been held to be merely declaratory and explanatory of the position which the Zemindar occupied under the settlement but did not prevent the Government from alienating the reserved articles of revenue therein mentioned. (Refer Secretary of State V. Rajah of Venkatagiri.[3]) The inclusion or exclusion from the assets is a matter peculiarly within the knowledge of the Zemindar or Government. The presumption laid down by the Privy Council in Secretary of State V. Kirtidas Bhupati [4] that the lands within the ambit of Zemindari are primafacie included in the assets (P. 56 ante) can only refer to cases as between the Government and the Zemindar. But the Madras High Court has held in Vobilineni Subbarao V. Rajah of Pithapuram [5] that even supposing the lands are situate within the Geographical limits of the Zemindari, there is no presumption that in settling the peshcush to be paid by the Zemindar under Regulation XXV of 1802, the income of all the lands in every village of the estate was taken into calculation and that the burden of proof would lie on the Zemindar that the income was so included in the assets.

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1. 31 I. C. 813—2. L. W. 1212.
2. 16 Mad. 34.
3. 4 L. W. 133.
4. 42 Cal. 710 P. C.
5. 53 M. L. J. 400.

The ascertainment of the titles of persons holding alienated lands of all descriptions not being Badshahi or Royal led to the passing of Regulation XXXI of 1802. Sec 15 of the Regulation enjoined upon the Collectors of the various districts the duty of keeping registers of lands exempted from the payment of revenue previous to the dates mentioned therein. The dates referred to were the dates of acquisition of the various districts by the British Government. One of such Registers was Oakes Inam register referred to by the Privy Council in Suryanarayana V. Pothanna [1].

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1. 41 Mad. 1012 P. C.

APPENDIX B.

Right to Minerals.

It has been already laid down in Chapter I that a king in Ancient India had no interest in the land itself but was entitled only to a share in the produce of the land. R. Shamasastri in his Evolution of Indian polity discusses the theory of the state ownership of land (App. C pages 172-176) and observes that the Mimamsaka view of land tenure negativing the state ownership was more in accordance with the history of Social evolution and with the nature of political constitutions in the Vedic and Brahmanic periods. Jagannatha Tarka Panchanana in his seventh discourse of Vivada Bhangarnava favours the view of the cultivator's ownership of the land not only on general principles but also according to custom or Vyavahara.

As to minerals, Manu says (Ch. VIII—39) 'the king obtains one half of ancient hoards and metals found in the ground by reason of his giving protection and because he is the lord of the earth, The last clause though interpreted by Buhler as a distinct recognition of the principle that the ownership of all land is vested in the king is as observed in Ch. I only an indication of the sovereign's paramount power over his subjects. The translation of the original as 'lord of the soil' adopted by the orientalist is also inaccurate.

Shamasastri opines that the Arthasastra of Kautilya belongs to the other school of thought which favoured the state owner ship of the soil. The learned author claimed also the state-

ownership with regard to fishing, ferrying and trading in vegetables.........(Book II Ch. I). The king was asked to carry on mining operations (P.52) and keep both mining and commerce (in minerals) as a state monopoly. Mines which required little outlay should be directly exploited by Government Agency and those that required large outlay were to be leased out for a fixed number of the shares of the output or for a fixed rent (Book II Ch. XII).

Consistent with the Feudal notions of Europe the sovereign's rights to the subjacent soil have been claimed as a prerogative right of the crown (Wooley V. Attorney General of Victoria). Minerals were held to include freestone, limestone, granite and clay. The Government of Madras declared that they laid no claim to minerals in Enfranchised Inams (Standing Orders 1890) but in 1907, provided that claims should be made to the state's share in all mineral produce in lands held on Inam tenures of the description there given. The right to minerals as at present understood primafacie vests in the crown or the Zemindar. The nonreservation of mineral rights by the Government in Permanent Settlement Regulations of 1793 & 1802 clearly proves that mineral rights so far as Zemindaries are concerned are vested in the Zemindars.

The rights of the Inamdars and lessees from the Zemindar to minerals in their holdings depends upon the construction of the grant or lease. The Privy Council has consistently held that in the absence of express or implied terms in the grant or lease, the mineral rights remained with the Zemindar (Refer Tituram Mukherji V. Cohen [1], Hari Narayan V. Sriram Chakravarti [2], Durga Prasad V. Braja Nath [3], Shashi Bhushan Misra

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1. 33 Cal 203 P.c.
2. 37 Cal 723 P.c
3. 39 Cal 696 P.c

V. Jyoti prasad [1], Rajkumar V. Megh Lal Pandey [2], Raghumatha Roy V. Durga prasad [3], etc). In Madras however, in Secretary of state V. Srinivasachariar [4], it was held that the recognition of a freehold right is the same thing in the eye of law as the recognition of a right to the soil of waste lands including the right to all the mineral, rocks and stones up to the centre of the earth. It was also held that such a right cannot be construed to limit the right of the owner to take only the agricultural or sylvicultural products of the soil. The decision was reversed by the Privy Council in Secretary of State V. Srinivasachari [5] and the law was brought in consonance with the other Privy Council decisions. In Secretary of State V. Shantaram [6], the Bombay High Court distinguished the Privy Council decisions as being applicable to cases where a right of reversion is reserved in the grantor and held that a grant by the Government passed the mineral rights also even in the absence of express words to that effect. The words 'above and below' in a grant would undoubtedly pass the mineral rights to the grantee as in Satya Niranjan V. Ramlal [7] In *ryotwari* tracts, the ryot would be entitled to work the mines provided he pays a royalty to the Government as provided by the Standing Orders.

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1. 44 Cal 585 P. C.
2. 45 Cal 87 P.C.
3. 47 Cal 95 P. C.
4. 40 Mad 268
5. 1921 M. W. N. 111.
6. 49 Bom 99.
7. 4 Pat 244 P.C.

APPENDIX C.

Acts and Regulations.

The Permanent Settlement Regulation (XXV of 1802).

Sec. 4. The Government having reserved to itself the entire exercise of its discretion in continuing or abolishing temporarily or permanently the articles of revenue, included, according to the custom and practice of the country under the several heads of Salt and Salt petre of the sayar, or duties by sea or land-of the abkari, or tax on the sale of spirituous liquors and intoxicating drugs-of the excise on articles of consumption of all taxes personal and professional, as well as those derived from markets, fairs and bazars-of lakhiraj lands or lands exempt from the payment of public revenue and of all other lands paying only favourable quitrents, the permanent assessment of the land tax shall be made exclusively of the said articles now recited.

Regulation VI of 1831.

A regulation to prevent the misappropriation of the emoluments annexed by the State to hereditary Village and other offices in the Revenue and Police Departments, and to maintain due efficiency of those offices

Preamble—

Sec. 2. It is hereby declared that all emoluments derived from lands, from fees in money or grain or from other Sources which have been annexed by the State to hereditary Village and

other offices in the Revenue and Police departments, are inalienable from such offices by mortgage, sale, gift or otherwise;

That all transfers which may hereafter be made thereof by the holders of such offices shall be null and void; and that such emoluments shall not be liable to attachment or other process in satisfaction of decrees of Court.

Enfranchised Inams Act (IV of 1862.)

An Act to declare what shall be proof of the Enfranchisement of Inams.

Preamble

Whereas...............under the Inam rules sanctioned by Government, under date the 9th August 1859, the reversionary rights of Government are surrendered to the Inamdars, in consideration of an equivalent annual quitrent and the Inam lands are thus enfranchised, and placed in the same position as other descriptions of landed property, in regard to their future succession and transmission; It is hereby enacted as follows.

2. The title deed of the Inam Commissioner, or an authenticated extract from the register of the Commissioner or Collector shall be deemed sufficient proof of the enfranchisement of land previously held on Inam tenure.

Enfranchised Inams Act (IV of 1866.)

An Act to exempt enfranchised Village or other Service Inams, whether revenue or police from the operation of Regulation VI of 1831.

Preamble. Whereas in the Madras Presidency certain Inams attached to hereditary village or other offices, in the Revenue or other Police Departments the claims connected with which are under the Provisions of Regulation VI of 1831, exclusively adjudicable by the officers of the Government in the Revenue Department have been, and may yet be, under sanction of Government, enfranchised from the condition of service and placed in the same position as other descriptions of landed property in regard to their future succession and transmission; it is hereby enacted as follows—

Regulations VI of 1831 not to apply to enfranchised service Inams.

Sec. 1. All hereditary Village or other Service Inams, falling hitherto exclusively under the cognizance of the officers of Government in the Revenue Department, under the provision of Regulation VI of 1831, which have been or shall be enfranchised from the condition of service by the Inam Commissioner, or other officer acting under the sanction of Government, shall be exempt from the operation of the aforesaid Regulation.

Evidence of Enfranchisement.

2. The title deed issued by the Inam commissioner or other officer duly authorised or an authenticated extract from the Register of the Commissioner or other officer, shall be deemed to be sufficient proof of the enfranchisement of the land previously held on service tenure.

Act not to have retrospective effect.

3. Provided that nothing in this Act shall be construed as anthorising any court of Civil Judicature to call into question decisions affecting any service Inams which may have been already passed by revenue officers acting under the provisions of Regulation VI of 1831 prior to the enfranchisement of such Inams,

Inams Act (VIII of 1869).

(An Act to prevent doubts as to the true content and meaning of certain words used in the title deeds of Inams heretofore furnished to Inamholders by the Inam Commissioner of the Madras Presidency, and to declare the true intent and meaning of Madras Acts IV of 1862 and IV of 1866).

Preamble.

Whereas under the rules sanctioned by the local Government in the year 1859 and published in the Fort St. George Gazette dated the 4th October 1859, for the adjudication and settlement of Inam Lands in the Madras Presidency the Inam Commissioner of the said Presidency is required to furnish Inamholders with title deeds in respect of their Inams, prepared according to certain forms prescribed by the Government;

And whereas the terms of the title deeds so prepared appear in many cases to convey a more extensive right than was intended to be given, or than could be legally given,

And whereas it is apprehended that the terms of the title deeds may be so construed as to affect the rights and interests which other persons may have in lands from which the Inams are derived or drawn, in cases where the Inamholders do not possess the proprietary right in the soil, but only the right of receiving the rent or tax payable to Government in respect of the Inam lands as transferees of the Government and it is therefore expedient to remove all doubts as to the true intent and meaning of the words used in the said title deeds;

And whereas the words 'land, and lands' are used in Madras Act IV of 1862 and IV of 1866 in connection with Inams in a sense not applicable to Inams, and it is expedient to explain the true intent and meaning of such words in the said Acts.

It is enacted as follows:—

1. Nothing contained in any title deed heretofore issued to any Inamholder shall be deemed to define, limit, infringe or destroy the rights of any description of holders or occupiers of the lands from which any Inam is derived or drawn, or to affect the interests of any person other than the Inamholder named in the titledeed; and nothing contained in Madras Act. IV of 1862, 'or in Madras Act IV of 1866, shall be deemed to confer on any Inamholder any right to land which he would not otherwise possess.

Effect of wordings of inam title deeds and of wording of Madras Acts IV of 1862 & IV of 1866

The Proprietary Estates Village Service Act

(II of 1894).

Sec 17. If the remuneration of a village office consists in whole or in part of lands, or assignments of revenue payable in respect of lands granted or continued in respect of or annexed to such village office by the State, the Government may enfranchise the said lands from the condition of service by the imposition of quitrent under the rules for the time being in force in respect of enfranchisement of Village service Inams in Villages not permanently settled or under such rules as the Government may lay down in this behalf; Such Enfranchisement shall take effect from such date as the Government may notify.

Provided that the said enfranchisement shall be applicable to all lands or assignments as aforesaid even though, at the time this Act comes into force they may not be devoted to the purpose for which they were originally granted;

And provided, further, that any lands or emoluments derived from lands which may have been granted by the proprietor

for the remuneration of village service and which are still so held or enjoyed, may be resumed by the grantor or his representative.

The hereditary village offices Act.

(III of 1895).

An Act to repeal Regulation VI of 1831 and for other purposes.

Sec. 5.

The emoluments of Village Offices, whether such offices be or be not hereditary and in the scheduled districts as defined in the scheduled Districts Act. 1874, all such emoluments and other emoluments granted or continued in remuneration for the performance of duties connected with the collection of revenue or the maintenance of order shall not be liable to be transferred or encumbered in any manner whatsoever and it shall not be lawful for any court to attach or sell such emoluments or any portion thereof.

The Madras Estates Land Act.

Act I of 1908.

An act to declare and amend the Law relating to the holding of land in Estates in the Presidency of Madras.

Sec 3 (2). 'Estate' means

(a) any permanently settled estate or temporarily settled Zemindari.

(b) any portion of such permanently settled estate or temporarily settled Zemindari which is seperately registered in the office of the Collector.

(c) any unsettled Palaiyam or Jagir.

(d) any village of which the land revenue alone has been granted in Inam to a person not owning the Kudivaram thereof, provided that the grant has been made, confirmed, or recognised by the British Government, or any seperated part of such Village.

(e) any portion consisting of one or more villages of any of the estates specified above in clauses a, b and c which is held on permanent under tenure.

Sec 3 (5) 'Landholder' means a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or of any provision of law.

(16) 'Ryoti land' means cultivable land in an estate other than private land but does not include –

(a) Tankbeds

(b) Threshingfloors, cattlestands, villagesites and other lands situated in any estate which are set apart for the common use of the villagers

(c) Lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of the Act or free of rent if granted after that date, so long as the service tenure subsists.

* * * * * * * * * *

Sec 6 (1) Subject to the provisions of this Act, every ryot now in possession or who shall here after be admitted by a landholder to possession of ryoti land not being old waste situated in the estate of such landholder shall have a permanent right of

occupancy in the holding but nothing contained in this subsection shall affect any permanent right of occupancy that may have been acquired in land which was old waste before the commencement of this Act.

Explanation. For the purpose of this subsection the expression 'every ryot now in possession' shall include every person who, having held land as a ryot, continues in possession of such land at the commencement of this Act.

(2) Where land held by a ryot with a permanent right of occupancy is surrendered or abandoned or save in the cases falling within subsection [4] of section 8 and the exception to Sec. 8, comes into the possession of the landholder and the land holder admits any person to possession of the same within a period of ten years from the date of the surrender, abandonment or coming into possession, the person so admitted shall have a permanent right of occupancy therein.

Explanation. Every landholder who shall have received or recovered any payment under Sec. 45 from any person occupying ryoti land other than old waste shall be deemed to have thereby admitted such person to possession unless within two years from the date of receipt or recovery of payment or the first of such payments if more than one he shall file a suit before the Collector for ejectment against such person.

(3) When a ryot is admitted the occupation of old waste it shall be lawful for the landholder to let it on such terms as may be agreed on between them; but such admission shall not in itself confer upon the ryot so admitted a permanent right of occupancy in the land so let; provided that this subsection shall not affect any special rights which by law or by custom the ryots may have in the waste land of the Estate.

(4) Admission to waste land under a contract for the pasturage of cattle and admission to lands reserved bonafide by a landholder for forest under a contract for the temporary cultivation thereof with agricultural crops shall not by itself confer upon the person so admitted a permanent right of occupancy or entitle him to the benefit of Section 157; nor shall such land, by reason only of such letting and use for pasturage or temporary cultivation become ryoti land.

(5) When a landholder has reclaimed waste land by his own servants or hired labour, he may by contract in writing prevent any person from acquiring a permanent right of occupancy in respect of the said land during a period of thirty years from the date of the first cultivation after reclamation.

(6) A person holding land as an ijaradar or farmer of the rent shall not, while so holding, acquire otherwise than by inheritance or devise a right of occupancy in any land comprised in the ijara or farm.

Explanation. A person having a right of occupancy in land does not lose it by subsequently becoming interested in the land as landholder or by subsequently holding the land in ijara or farm.

Reservation of mining rights.

Sec. 7. Nothing in this Act shall affect any right of a landholder to make a reservation of mining rights on admitting any person to possession of ryoti land.

Merger of occupancy right.

Sec. 8. (1) Whenever before or after the commencement of this Act the entire interests of the landholder and the occupancy ryot in any land in the holding have become united by transfer, succession or otherwise in the same person, such person shall have no right to hold the land as a ryot, but shall

hold it as a landholder; but nothing in this subsection shall prejudicially affect the rights of any third person.

(2) Whenever before or after the commencement of this Act, the occupancy right in any land shall have been transferred to a person jointly interested in the land as landholder, he shall be entitled to hold the land subject to the payment to his co-landholders of the shares of the rent which may from time to time be payable to them, and if such transferee lets the land to a third person, such third person shall be deemed to be an occupancy ryot in respect of the land.

(3) The merger of the occupancy right under subsections (1) and (2) shall not have the effect of converting ryoti land into private land.

(4) In cases where the interest of the ryot in the holding has passed to the landholder by transfer for valuable consideration before the passing of the Act otherwise than at a sale for arrears of rent or has passed by inheritance the landholder shall have the right for a period of twelve years from the passing of this Act of admitting any person to the possession of such land on such terms as may be agreed upon between them, and the person so admitted shall not be entitled during such period to the benefit of the provisions of sec. 46.

In cases where such interest passes to the landholder by inheritance after the passing of this Act, the landholder shall have the same right for a period of twelve years from the date of succession.

Exception. Notwithstanding anything contained in this section where before or after the commencement of this Act, the Kudivaram interest in any land comprised in an estate falling within clause (d) of subsection (2) of section 3 has been or is

acquired by the Inamdar, such land shall cease to be part of the estate.

Right of landholder to eject a ryot.

Sec. 9. No landholder shall as such be entitled to eject a ryot from his holding or any part thereof otherwise than in accordance with the provisions of this Act.

Sec. 10 (1) All rights of occupancy shall be heritable and shall be transferable by sale, gift or otherwise.

(2) If a ryot dies intestate in respect of a right of occupancy and without leaving any heirs except the crown, his right of occupancy shall be extinguished, but the land in respect of which he had such right of occupancy shall not cease to be ryoti land.

APPENDIX D.

——:(o):——

Glossary.

Asalminaha. (Maclean's Manual of Administration Vol III. P 504.) Deduction from the total amount of revenue (beriz or jumma) entered on the credit side of the account with Government. The term is therefore applied to rentfree and other favourably assigned lands. Commonly used for unoccupied and unassessed land. Asalminaha lands are erroneously described as Inams though they are treated as Inams for the purpose of enfranchisement.

Bilmakta. With fixed rent. Bilmakta Inams are lands held at a fixed rent before the usual standard (Maclean's Manual Vol. III P 352). In the south the term denotes land held at any fixed rate.

Brahmadayam. A general term denoting Inams held by Brahmins for their personal benefit (cf. Khairati.)

Dhakala Inams. Inams entered in any particular register.

Deshmukh. The head of a district, a hereditary native officer under the former Governments exercising chief revenue or police authority over a district and responsible for the revenue.

Deshpandya. The hereditary revenue accountant of a district.

Devadayam. Inams granted for the support of temples or Devastanams. The word indicates a gift for religious purposes

but does not necessarily connote anything more. It is not conclusive in favour of a temple or mosque. The Inam commission in 1859 dealt with Inams to Temples or Mosques and Inams to servants on condition of rendering services under the class 'Devadayam.' Refer Bala Tripuramba V. Secretary of State 1928 Mad. 282.

Dharmadayam. Inams granted for any charitable purpose

Dumbala. (1) An inam held free of quitrent (Sarvadumbala)

(2) An order for collecting the share of the produce (Refer P. 128 ante)

Ghair Dakhala Inams. Inams not entered In any particular Register.

Jeroyiti. Cultivation, cultivated land, often usedfor lands ordinarily assessed as opposed to Inam (Refer P. 109 ante.)

Kattubaai A favourable quitrent on lands given to public servants especially in Zemindaris.

Khairati. Means charity. Inams held by Muhammedans for personal benefit.

Khandriga. A small hamlet; Also a large block of land granted as Inam less than a village but much larger than ordinary Inams.

Lakhiraj. Rent free derived from khiraj meaning rent. The word khiraj was first applied to the tribute levied by Muhammedans on infidels and afterwards to the general land revenue.

Mauza. Refer P. 107 ante.

Nandavanam. Grant for a garden, the flowers of which are appropriated to the use of a pagoda or of the village community.

Nimebadi. At favourable rent. The term is used freely with both the words Inam and jeroyiti. (Refer Duddumpudi Venkatrayudu V. Bikkina Subbarayudu 1918 M. W. N. 643) It depends upon the grant whether the grantees were created Inamdars or tenants of Jeroyiti lands only.

Not agreed Inams. Inams which have not been agreed to be enfranchised by the Inam commission in 1860 by the holders thereof. There is no presumption that all presettlement Inams have been enfranchised by the Inam commission, In the unenfanchised Inams, the Government reserved its right of reversion and the holders thereof were not entitled to alienate them (Refer P. 9.. ante.)

Sarvamanyam. (Sarvadumbala) Inam held free of rent (Sarva means tax) Refer P. 138 ante.

Waram. A share of the produce of the land, Melvaram denoting the landlord's share and kudivaram that of the tenant. The latter term gradually acquired the significance of occupancy right.

Waram System. The system of the Government sharing the produce of the land instead of receiving a money rent (Refer Zemindar of Parlakimidi V. Yalla Ramayya 51 M. L. J. 510).

Addenda.

P. 21—53 M. L. J. Short notes 15 = 1928 Mad 282 Bala Tripuramba V. Secretary of state.

P. 38. Grants burdened with service and in lieu of wages Rajah of Vizianagaram V. Applaswami 59 M. L. J. 183. F. B.

P. 84. Prescriptive right of Mortgagees 1926 M. W. N. 9 Butchiraju V. Sitaramayya.

P. 98. A Hindu widow in possession of a holding on the the date when the Estates Land Act came into force holds the the occupancy holding only as a hindu window and not absolutely (cf. 30 All 490 ; 92 I. C. 637).

A cosharer cannot let into the holding a person so as to confer upon him occupancy rights nor can he acquire such rights to the prejudice of the other cosharer. (Midnapore Zemindary company V. Kumar Naresh. 47 M. L. J. 23 at 29.)

P. 139. A trustee of a devasthanam is also a landholder and can let in tenants in ryoti land so as to confer upon them rights of occupancy. The principle enunciated with reference to permanent leases does not apply (Kallalagar Devasthanam V. AnthonyMoopan 48 M. L. J. 147.)

P. 154. Village services excluded from settlement-Observations of Wallace J. in Appeal No. 355 of 22 not followed in Lakshmi Venkayamma V. Secretary of state.

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